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COMMITTEE ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS
Twenty-seventh session
Geneva, 29 April-17 May 2002
Item 4 of the provisional agenda

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Follow-up to the consideration of reports under articles 16 and 17 of the Covenant

Note by the Secretariat

1. At its fourteenth session, the Committee on Economic, Social and Cultural Rights, recognizing the importance of periodically reviewing the implementation by States parties of its suggestions and recommendations, requested the Secretariat to submit to it, as from the fifteenth session, a document indicating all cases where a follow-up had been suggested by the Committee.

2. The information requested by the Committee is to be found in the annex to the present note.

GE.01-46631 (E)

Annex

FOLLOW-UP BY STATES PARTIES TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(status as at 1 January 2002)

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
Armenia	E/1990/5/Add.36 E/C.12/1/Add.39 E/C.12/1999/SR.38-40	The Committee recommends that the Government of Armenia provide more specific and detailed data, which are up to date and, where necessary, disaggregated by gender, relating to the rights set forth in the Covenant. The Committee requests the Government to provide the data specifically requested on housing, food, health and education within six months of the adoption of the concluding observations (concluding observations, para. 7).	3 June 2000	
Colombia	E/C.12/4/Add.6 E/C.12/2001/SR.61 and 62 E/C.12/1/Add.74	The Committee confirms that, if the State party so wishes, it is willing to undertake a country mission to Colombia, with a view to helping the State party implement its obligation under the Covenant, in the light of the concluding observations (E/C.12/1/Add.74, para. 53)		

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
Dominican Republic	E/1990/6/Add.7 E/C.12/1996/SR.29 and 30 E/C.12/1/Add.6	The Committee invited the State party to confirm publicly its commitment to implement its binding human rights treaty obligations. It strongly called upon the Government of the State party to honour its obligations under the Covenant, particularly through maintaining the proper direct and constructive dialogue with the Committee as called for in the Covenant. The Committee proposed to adopt its final concluding observations in relation to the State party at its sixteenth session; for that reason the present concluding observations would be considered "preliminary", pending further consideration of the report based on a dialogue with representatives of the State party at its sixteenth session (concluding observations, para. 26).	28 April- 16 May 1997	Final concluding observations were adopted by the Committee at its seventeenth session (17 November- 5 December 1997), E/C.12/1/Add.16.
		The Committee further recommended that the State party provide it with written replies to the concluding observations adopted at its eleventh session (E/C.12/1994/15), in particular with regard to its request that the State party invite representatives of the Committee to visit the Dominican Republic; the written list of issues drawn up with respect to the third periodic report (E/C.12/1995/LQ.7), information contained in the document "The Dominican Republic: an independent report submitted to the United Nations Committee on Economic, Social and Cultural Rights by the International Women's Rights Action Watch" (concluding observations, para. 28).	28 April- 16 May 1997	1. The State party invited representatives of the Committee to visit the Dominican Republic (note verbale of 28 April 1997). 2. Written replies to the list of issues submitted 23 April 1997.

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		The Committee requested the State party to submit the information referred to in the preceding paragraph by 15 February 1997 in order to allow the Committee to consider that information at its sixteenth session (concluding observations, para. 29). The Committee strongly recommended that the specific information requested above be presented to the Committee at its sixteenth session by an expert delegation (concluding observations, para. 30).	28 April-16 May 1997 28 April-16 May 1997	The Committee welcomed the resumption of dialogue with the Dominican Republic … and the submission by the State party of comprehensive written answers to its list of issues. The Committee also welcomed the appearance before it of an expert and a high-level delegation from the capital, which allowed for a fruitful and constructive dialogue to be conducted (E/C.12/1/Add.16, para.1, 3 December 1997).
El Salvador	E/1990/5/Add.25 E/C.12/1996/SR.15, 16, 18 E/C.12/1/Add.4	Further information was requested on articles 6-8 and 15 of the Covenant, as well as on any problems encountered in that regard (concluding observations, para. 36).	31 October 1996	The requested information was provided on 11 August 1998.

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		Information was requested on the activities of the Office of the Procurator for the Defence of Human Rights, in particular on how much weight its recommendations carried and on the action taken on complaints it filed with regard to violations of economic, social and cultural rights, information enabling the Committee to evaluate the extent to which the members of indigenous communities enjoyed all the economic, social and cultural rights provided for in the Covenant (concluding observations, paras. 28 and 35). The proposal of the Centre for Human Rights concerning technical cooperation should be given favourable consideration and such assistance used to guarantee the enjoyment of economic, social and cultural rights by all (concluding observations, para. 39).	Next report	Within the framework of project ELS/95/AH/10 (1997/98)
Guinea	Without report E/C.12/1996/SR.17, 22 E/C.12/1/Add.5	The Committee reiterated its request that the Government of Guinea actively participate in a constructive dialogue with the Committee on how the obligations arising from the Covenant could be fulfilled in a more adequate manner. It called to the Government's attention the fact that the Covenant created a legal obligation for all States parties to submit periodic reports and that Guinea had been in breach of this obligation for many years (concluding observations, para. 25).		

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		The Committee recommended that the Government of Guinea avail itself of the advisory services of the Centre for Human Rights in order to enable it to submit as soon as possible a comprehensive report on the implementation of the Covenant, in conformity with the revised general guidelines adopted by the Committee in 1990 (E/C.12/1991/1) and with particular emphasis on the issues raised and concerns expressed in the concluding observations (concluding observations, para. 26). The Committee encouraged the Centre for Human Rights to make available, through its programme of advisory services and technical assistance, expert assistance to States for the purpose of formulating policies on economic, social and cultural rights, and developing the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights, as well as developing adequate means of evaluating and monitoring their realization (concluding observations, para. 27).		
Honduras	E/1997/22, para. 391 Letter from the Government of Honduras, January 1997	Request for technical assistance	May 1997	Assistance provided, March 1997. Initial report received 2 April 1998

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
Israel	E/1990/5/Add.39 E/C.12/1998/SR.31-33 E/C.12/1/Add.27	The Committee requests the State party to provide additional information on the realization of economic, social and cultural rights in the occupied territories, in order to complete its initial report and thereby to ensure full compliance with its reporting obligations. Detailed information, including the latest statistical data, is also requested on the progressive realization of economic, social and cultural rights in East Jerusalem, keeping in mind the concerns raised by the Committee in the relevant paragraphs of the concluding observations. In addition, the Committee also requests updated information on the target dates for recognizing unrecognized villages and an outline plan for the delivery of basic services including water, electricity, access roads, health care and primary education, to which the villagers are entitled as citizens of Israel. The Committee requests that the additional information also include an update on the Outline Plan of Ein Hod and progress in the recognition of Arab El-Na'im, as well as an update on the Jahalin Bedouins camped in Abu Dis who are awaiting a court decision on their resettlement. The Committee requests the submission of detailed additional information in this respect in time for the twenty-third session of the Committee in November and December 2000 (para. 32).	30 June 2000	
	Twenty-fourth session, 13 November-1 December 2000	The Committee, having considered the information provided to it by the Permanent Mission of Israel in its note verbale dated 3 November 2000, in a letter addressed to the Permanent Representative of Israel to the United Nations Office and other International	1 March 2001	The Permanent Mission of Israel to the United Nations Office and other International Organizations in Geneva

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		Organizations in Geneva, reminded the State party that the concluding observations requested the submission of additional information in time for the Committee's twenty-fourth session (November-December 2000). Further, the Committee emphasized that some of the additional information, especially the material concerning the occupied territories, was requested "in order to complete the State party's initial report and thereby ensure full compliance with its reporting obligations" (para. 32). In light of all the circumstances, its concluding observations and the current crisis in Israel and the occupied territories, the Committee resolved at its twenty-fourth session to consider at its next (twenty-fifth) session the situation in the OPT, with a view to assisting the State party to conform to its obligations under the International Covenant on Economic, Social and Cultural Rights. Accordingly, the Committee urged Israel to submit up-to-date information on economic, social and cultural rights in the occupied territories by 1 March 2001. This information should give particular attention to the issues concerning the occupied territories that were identified in the concluding observations, as well as those mentioned in the Committee's letter. The Committee decided to consider the additional information, and any other reliable material with which it is provided, on 4 May 2001 (3.00-6.00 p.m.). The Committee invited the State party to participate in this discussion.		in its note verbale dated 3 November 2000 informed the Committee that the second periodic report "... will include issues referred to, and information requested by, the CESCR in its concluding observations to Israel's Initial Report of November 1998". The Mission also informed the Committee that "It is expected that the second periodic report will be ready for submission no later than March 2001." The additional information was submitted by the State party on 20 April 2001 (E/1989/5/Add.14) and considered by the Committee at its twenty-sixth session in August 2001 (E/C.12/1/Add.69). The second periodic report was submitted by the State party on 3 August 2001.

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
Libyan Arab Jamahiriya	E/C.12/1/Add.15	The Committee requested that the State party provide the Committee with all of the written answers promised by the delegation, and that the State party's second periodic report contain more information regarding actual practice and the effective implementation of the rights guaranteed by the Covenant and include information on action taken with regard to the present concluding observations (concluding observations, para. 25).	Second periodic report	
Nigeria	E/C.12/1/Add.23 May 1998	The Committee urges in the strongest terms that union leaders and their rank and file members, including in particular those named in paragraph 17 above, who have been imprisoned without being charged or tried, be freed immediately (concluding observations, para. 37).	Urgently	
		"The Committee recommends that more positive and open dialogue between the Committee and the Nigerian Government can be undertaken, and maintained. This dialogue need not await the passage of the next five years. The Committee calls upon the Government to submit a comprehensive second periodic report, prepared in conformity with the Committee's guidelines, by 1 January 2000." (Concluding observations, para. 43.)	1 January 2000	
		The Chairperson of the Committee, in her letter, dated 27 November 2000 and addressed to the Permanent Representative of Nigeria to the United Nations Office and other International Organizations in Geneva, informed the State party that at its twenty-fourth session (13 November-1 December 2000) the	1 November 2001	

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		Committee, under its follow-up procedure, considered the status of implementation of its previously adopted concluding observations and, with respect to Nigeria, found that as of this date the State party had not submitted its second periodic report called for in paragraph 43 of its concluding observations (May 1998). Accordingly, the Committee decided to request the State party to submit its second periodic report as soon as possible but not later than 1 November 2001. At the same time the Committee indicated that "If the Government of Nigeria is experiencing difficulties in the preparation of its second periodic report, it may avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights for the preparation of States parties' reports to be submitted under the International Covenant on Economic, Social and Cultural Rights."		
Paraguay	E/1990/5/Add.23 E/C.12/1996/SR.1, 2, 4 E/C.12/1/Add.1	The Committee requested the State party to provide it with written replies to the unanswered questions from the list of issues (concluding observations, para. 32). The next report should fill in the information gaps identified during the consideration of the initial report by the Committee (i.e. detailed information on the full implementation of legislative and administrative measures relating to prevention and enforcement in respect of safe and healthy working conditions; cases in which the Covenant has been invoked in the courts) (concluding observations, para. 32).	31 October 1996 30 June 1999	The requested information was provided on 10 December 1998

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
Peru	E/C.12/1/Add.12	The Committee called upon the State party to submit as soon as possible all the relevant information which it had failed to provide during the consideration of its report. The State party should, in particular, give detailed information on the legislative and other measures and practices adopted in connection with the right to adequate housing and the right to social security, particularly in relation to the functioning of the pensions system (concluding observations, para. 40).	As soon as possible	The requested information was provided on 2 December 1997 and 18 February 1998
Portugal (Macau)	E/1990/6/Add.8 E/C.12/1996/ SR.31-33 E/C.12/1/Add.9	The Committee took note of the readiness of the State party to provide it with additional information in reply to the concerns expressed by it in the course of the discussion, and recommended that in its replies the State party pay particular attention to the issue of family reunification and to the legislative provisions safeguarding the principles of ILO Conventions No. 103 and No. 138 and their practical applications (concluding observations, para. 16).	1 May 1997	
		The Committee recommended, in view of the lack of sufficient information provided by the State party, that detailed information be provided on measures taken to implement the provisions of article 10. In that connection, the attention of the State party was drawn to the relevant parts of the Committee's revised guidelines regarding the form and contents of reports to be submitted by States parties (concluding observations, para. 18).	1 May 1997	

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		The Committee strongly urged the Portuguese Administration to take all necessary measures to ensure that the reports under the Covenant were submitted after 1999 (concluding observations, para. 24).		
Senegal	E/1990/6/Add.25 E/C.12/2001/SR.32 and 33 E/C.12/1/Add.62	The Committee confirms that, if the State party so wishes, it is willing to undertake a country mission to Senegal to consider the concluding observations, with a view to helping the State party implement its obligations under the Covenant (E/C.12/1/Add.62, para. 63)		
Solomon Islands (without report)	E/C.12/1/Add.33 (twentieth session)	The Committee recommends that the Government of Solomon Islands avail itself of the advisory services of the Office of the United Nations High Commissioner for Human Rights, so that it may submit, as soon as possible, a comprehensive report on the implementation of the Covenant in conformity with the Committee's revised guideline s and with particular emphasis on the issues raised and concerns expressed in the present concluding observations (concluding observations, para. 25). The Committee also encourages the Office of the High Commissioner for Human Rights, through its programme of advisory services and technical cooperation, to make expert assistance available to the Government for the purpose of formulating policies on economic, social and cultural rights and developing the	As soon as possible	

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
		implementation of coherent and comprehensive plans of action for the promotion and protection of human rights, as well as for developing adequate means of evaluating and monitoring their realization (concluding observations, para. 25). In accordance with articles 2.1 and 23 of the International Covenant on Economic, Social and Cultural Rights, the specialized agencies are invited to supply the Committee with supplementary information and comments relevant to the status and enjoyment of economic, social and cultural rights in Solomon Islands, thereby assisting the Committee and the State party to identify appropriate measures designed to implement the Covenant in Solomon Islands. The Committee invites the State party to participate in a dialogue to be held during the Committee's twenty-first session together with representatives of the relevant specialized agencies, such as the World Bank, the International Monetary Fund, FAO, WHO, ILO, UNDP, UNICEF and UNESCO. The Committee expresses its belief that only by means of a constructive dialogue between the State party, the above institutions and the Committee can an adequate and realistic appraisal of the feasible development and human rights strategies be achieved for the benefit of all citizens of Solomon Islands (concluding observations, para. 28).	Twenty-first session, 19 November 1999 38th meeting	The following United Nations bodies and specialized agencies provided the Committee with the requested information: UNDP, UNICEF, FAO, The World Bank, IMF, WTO. A representative of the State party participated in the discussion the Committee held on 19 November 1999.

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
	E/2000/22, Chapter VI (twenty-first session)	The Committee acknowledged with appreciation the willingness of the Government of Solomon Islands to cooperate with the Committee and encouraged it to finalize as soon as possible the drafting of its initial report on the implementation of the Covenant and submit it to the Committee for its consideration. The Committee acknowledged with appreciation the contribution of Specialized Agencies (the International Monetary Fund (IMF), the Food and Agriculture Organization (FAO), and the World Trade Organization (WTO)), United Nations organs (the United Nations Development Programme (UNDP)), and non-governmental organizations (the Centre for Housing Rights and Evictions (COHRE), Amnesty International and the International Commission of Jurists (ICJ)) to the Committee's review of the state of implementation of the Covenant by the Government of Solomon Islands. The Committee expresses its particular appreciation to the United Nations Development Programme for the assistance provided to the Government of Solomon Islands in response to the Committee's concluding observations of May 1999.		Initial report was submitted by the State party on 2 July 2001
Sri Lanka	E/1990/5/Add.32 E/C.12/1998/ SR.3-5 E/C.12/1/Add.24	The Committee further requests that an updated report be provided on progress achieved by the Government in addressing the problems of poverty, malnutrition and lack of adequate housing (para. 28).	1999	

State party	Report/summary records/concluding observations	Follow-up measures requested	Deadline	Action taken
United Kingdom of Great Britain and Northern Ireland: Hong Kong	E/1994/104/Add.10 E/C.12/1996/SR.39,41, 42 and 44 E/C.12/1/Add.10	The Committee requested that, within 45 days, it receive a comprehensive response to its inquiry regarding three Vietnamese refugees who had been denied medical and dental treatment, mainly for refusing to return voluntarily to Viet Nam (concluding observations, para. 42).	27 January 1997	Response received on 23 January 1997
Zimbabwe	E/C.12/1/Add.12	The Committee reminded the State party that, as a signatory to the Covenant, it was committed to ensure compulsory, free primary education to all children in Zimbabwe. Even though the Committee was aware of the current difficulties in Zimbabwe and the State party's efforts in that field, the Committee invited the State party to submit to it within a year a plan of action and a progress report as to the implementation of this obligation (concluding observations, para. 22).	16 May 1998	
		Bearing in mind that members of the Committee requested specific information that was not provided during the examination of the State party's report, in particular on the cultural situation and the participation of minority groups in cultural life, the Committee urged the State party to submit the requested additional information and statistics within three months of receipt of the Committee's concluding observations, and in any event prior to the Committee's seventeenth session (concluding observations, para. 23).	20 August 1997	

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COMMITTEE O N ECONOMIC, SOCIAL
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Twenty-eighth session
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Item 3 of the provisional agenda

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of general discussion on article 3 of the Covenant: equal right of men and women to the enjoyment of economic, social and cultural rights set forth in the Covenant (Monday, 13 May 2002)

Women's right to adequate housing

Background paper submitted by Ingrid Westendorp, lecturer in law at the University of Maastricht, (The Netherlands)

The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

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Introduction

1. The purpose of this paper is to show the influence of gender factors on the right to housing for women. In the first part I will go into the normative contents of the right as it stands today and determine to what extent equal enjoyment of the right to housing for men and women is achieved. The focus will be on the concept of adequacy, since the way in which adequacy is perceived may be different according to gender. Furthermore, some aspects that constitute adequacy turn out differently for women.

2. How gender aspects influence housing rights will be illustrated by looking at different groups of women that have specific vulnerabilities as far as housing is concerned.

3. Finally, some attention will be paid to the aspect of violations of women's housing rights. In particular, violations by non-State actors will be highlighted.

Normative contents of the right

The concept of adequacy

4. Already a great deal of international standard-setting as regards the right to housing has taken place. It has become clear that housing is much more than shelter, and that the right is fulfilled only when a certain level of adequacy is achieved. In the framework of the United Nations the concept of adequacy has been studied and it has been determined that several elements form part of it.[1] The question is whether these elements of adequacy are equally tailored to the situation for men and for women and whether they work out in the same way for both sexes. Moreover, it should be determined if there are still other factors that have not yet been incorporated in the concept of adequacy that play a specific role as far as women's housing is concerned. These questions will be discussed in the subsequent sections.

Legal security of tenure

5. Procuring a legal, safe place to stay is in many countries very difficult for women because there are gender biased laws or financial, cultural or traditional impediments that prevent women from owning or renting a place to live. Particularly in developing countries, many women have no other choice than to live in areas where there is a danger of eviction, because settlement is illegal or because these sites have been earmarked by the Government for other purposes than housing. Girls and women suffer disproportionately when they are evicted. Eviction and ensuing homelessness entail gender specific physical, economic, social and psychological harm. Security of tenure therefore, seems to be even more important for women than for men.

Availability of services and facilities

6. Most women's lives are home-centred. It is the place where they raise their children and do their household chores. If basic services and facilities are inadequate, this has far more repercussions for women than for men. Where water is not readily available, girls and women are supposed to walk (sometimes long distances) and fetch the water in (heavy) pitchers they

have to carry. When the water is contaminated, women are the first to catch diseases because they continuously come into contact with the water while cleaning the house and washing the clothes. The same holds true when the surroundings are filthy because the drainage system is inadequate (or even non-existent) and there is no garbage collection.

Affordability

7. The affordability level is higher for men than for women because in general the economic and financial position of men is better. Generally speaking, women have had less education and consequently will have lower-paid jobs. Moreover, there may be cultural impediments to women working in salaried jobs or working full-time. When the affordability of living costs is based on the average income, it should be borne in mind that women earn less than the average. What is supposed to be affordable housing for a family unit in the traditional sense is by no means affordable for women or for families headed by single mothers.

Habitability

8. A house should provide adequate space and protection against cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. An inadequate housing situation is worse for women because they live and work in and around the home. For instance, if there is no gas or electricity to cook on and indoor wood fires are used where there is no adequate ventilation system, women will suffer sooner from respiratory diseases than men.

Accessibility

9. The problems women are faced with in gaining access to housing and land are manifold, yet in general women are not listed as a disadvantaged group. Access to credits and loans is reserved for people with steady, well-paid jobs or who have collateral. Most of the time, women do not meet these requirements.

Location

10. Since women are traditionally burdened with the task of raising the children, the proximity of day-care centres and schools is a prerequisite if women have to work for their living. Living near polluted sites will have a greater effect on the health of those women who remain in and around the house all day.

11. Due to the fact that women are a minority in decision-making bodies, they hardly ever have a say in the matter of location, building requirements for homes or general infrastructure. Since they are the ones who spend the greater part of their lives at home, they also have specific knowledge of environmental planning and building. This knowledge is wasted when women are not involved in policy organs.

Security and dignity

12. Security in the home means to be free from being harassed, battered, humiliated or subjugated; to be regarded as a person entitled to full human rights. In some situations, women's security and dignity are endangered by acts of the public authorities, e.g., in the case of government-authorized evictions.

13. More common, however, are situations in which women are threatened in their own homes by private persons. Sometimes landlords abuse the vulnerable situation of single women, or employers may harass the domestic servants who live in their homes. These situations are dwarfed, however, by the global-scale problem of domestic violence. This type of violence is not only prevalent in all countries of the world, but also in all layers of society. Their relatives and in-laws but, most frequently, their male partners will abuse women physically, sexually and emotionally. The home can be a very dangerous place for girls and women in developed and developing countries alike.[2] Violence at home crowds out any aspect of adequacy that may have been achieved. Without safety, adequacy remains illusory.

14. When victims of domestic violence decide that they cannot take it anymore, they are often faced with the choice between staying in the abusive relationship or living in the streets, because shelters for battered women are not always available or may be filled to capacity. In this way, domestic violence can also be a cause of homelessness for women.

Privacy

15. Privacy is generally understood as a right to have a sphere of non-interference vis-à-vis the public authorities. In cases of domestic violence, the right to privacy is not to the benefit of women and girls, but rather a tool in the hands of the perpetrators. Batterers enjoy impunity because the authorities, including the police, refrain from interfering in what they consider to be a private matter.

16. Privacy in the sense of the opportunity to withdraw from others is very difficult to realize in situations of inadequate housing. Especially when extended families live in cramped quarters this may lead to psychological problems for women who are confined to the home.

Independence

17. The concept of housing is still based too much on the traditional pattern for a family: a man, woman and children living somewhere as an independent unit. However, for many women all over the world their housing conditions are greatly influenced by the fact that they live in a state of constant dependency on others. This dependency may last from birth till death.[3] Extensive discrimination against women continues to exist. Women are looked upon as inferior to men because of their gender, and because of this alleged inferiority they are subjected to, and thus made dependent on, the men of their community. This is apparent with regard to the right to housing from the fact that many women will never be in charge of their own living conditions.

18. For legal, cultural or economic reasons, many single women cannot live independently because they cannot (afford to) own or rent housing or it is inconceivable in their community that they live on their own. The mobility rights of married women are legally restricted in many countries because a woman is obliged to live where her husband settles down. For some groups of women the dependency as regards their housing situation is even worse than for others because they are compelled to live in households of which they are not really a part and in which their voices are not heard. Divorcees, widows and single mothers may be forced to find shelter with relatives or in-laws who regard them as a burden. Domestic servants, especially those who find employment far away from home, are forced to live in the house of their employer, sometimes relegated to sleep in sheds and attics.

19. Victims of domestic violence who flee their homes, refugees and internally displaced women are dependent on the services provided by safe-houses, refugee camps or whatever temporary shelter is provided by the authorities.

20. This state of dependency with regard to housing should be taken into account. It cannot be shaken off as a temporary or emergency situation because it is the reality for millions of women all over the world, either during a certain period of their lives or throughout their lifetime. Housing cannot be adequate if the enjoyment of the right is dependent on another person or persons.

Vulnerable groups

Girls

21. Though girls are not a vulnerable group per se, their housing situation as adults is greatly influenced by their childhood. Girls are modelled and trained in order to fulfil stereotyped ideals. Desirable "feminine" characteristics, like pliability and submissiveness are stimulated, while "masculine" characteristics such as independence and initiative are suppressed. This moulding influences the enjoyment of various human rights. Particularly relevant in the framework of housing are the right to education and the right to employment.

22. In developing countries, poor families will give preference to educating boys over girls if they do not have the financial means to give all their children an education. An education for girls is not considered to be overly important since girls are predestined to become housewives and mothers, not to have a career.

23. In developed countries girls legally have the same access to education and job training as boys, but in practice their education and job training is focused on certain qualities and jobs that are considered as suitable for their gender. They are directed towards jobs in the service sector, in which the care concept plays an important role; women take care of children, the sick and the elderly. Though there is nothing wrong with providing services, and this is in fact much needed, society values this type of work less than so-called masculine jobs and, consequently, the salary level of these "female" types of job is lower. Women earn "individual" salaries rather than "family" salaries.

24. The disadvantage girls have with regard to education and job training makes itself felt most acutely when they are grown women and they cannot earn wages that enable them to afford adequate housing by themselves.

Homeless girls and women

25. Homelessness is far more dangerous for women and girls than for men and boys, because the former are more vulnerable to acts of violence and sexual abuse when they are living in the streets. The protection of four walls that form a barrier against the outer world has disappeared. Families are scattered, with the result that social networks dissolve.

26. Moreover, the "normal" chores, like providing food, clothing and medical attention to the family, are still expected of a woman when she has become homeless, particularly when she has to take care of her children. It goes without saying that these tasks must be performed under the most arduous circumstances.

Divorcees and widows

27. In certain parts of the world divorce and widowhood may cause homelessness or inadequate housing for women. This is particularly true for societies where women are considered to be outsiders in the families they live with. When a girl is born, she is regarded as a burden for her family, because she is yet another mouth to feed while nothing is to be expected from her in return. She is raised with the single goal of getting her married and when she does marry, she will move away and become a member of her husband's family. In order to prevent the property owned by the family, especially land and home, being dispersed on the death of the father, inheritance laws, traditions and customs deny the daughter an equal share with her brother(s). By way of compensation, she may leave her home with a dowry, consisting of jewellery or consumer goods, but she is not entitled to any real estate. Once married, the woman remains an outside element in the family of her in-laws. She will have access to a home and may use the land, but she will be denied a share of her husband's property when he divorces her or when he dies. This is an awkward predicament for divorcees and widows, since they cannot claim access to a place to live either from their own blood relatives or from their in-laws. Especially when the dowry consisted of consumer goods that have long since perished, they are left empty handed.

28. If her relationship with her in-laws is good, the widow may stay with them. If a woman has an adult son, she may have the option of living with him and his family. Sometimes it is possible for her to return to the natal home and live under the roof of her father or brother. Some women become unpaid domestic servants in relatives' homes in return for shelter and food, while in some societies remarriage is feasible. When none of the options mentioned above are open to them, women are turned out onto the streets.

Domestic servants

29. Daughters of poor families may decide to contribute financially by finding a paid job. Since many of them lack any formal education, the obvious choice is to find employment as a domestic servant. When these girls have to look for employment far away from home,

sometimes even abroad, they may find themselves in a very vulnerable position. In their employers' homes their housing situation is sometimes very bad, because the habitability of their living quarters leaves much to be desired. Some girls have to sleep in kitchens or sheds, sometimes even together with animals. Worse still is the situation where girls are abused by their employer.[4]

Female refugees and internally displaced women

30. Women who have been forced to leave their homes because of forced evictions, natural or human-made disasters, or internal or international armed conflict situations, may find shelter in centres and camps provided by Governments, or national and international non-governmental organizations. Though women and children form the large majority of refugees and internally displaced persons, camps are not tailored to gender-specific needs. Women are forced to live at close quarters with unrelated males, often sharing with them latrines and washing facilities.[5] Girls and women feel unsafe because many camps are not illuminated at night. Camps are often situated in dangerous locations, especially near war zones. Sometimes girls and women have to leave the camp and walk long stretches in order to fetch water or to gather firewood, thus becoming easy targets for enemy attacks. Inside the centres and camps many women are abused and/or sexually exploited by fellow refugees.[6]

Single mothers

31. While women in general are poorer than men, single mothers are the poorest of the poor. It is estimated that at the moment world-wide one third of all families are headed by single mothers and their number is still growing. Women who have to cope with raising their children alone are faced with gender-biased laws, customs and stereotyped ideas that get in the way of their taking proper care of their families. Their average income is low and their career prospects are bleak, because they lack the required qualifications for better paid jobs. Many do not even work or only part-time, because there are not enough day-care facilities, or the ones available are very expensive. They have difficulty in gaining access to housing and when they succeed in renting a house, they may well lose it again when the rent is raised.[7]

32. The support these women need consists of a combination of housing subsidies, childcare facilities and job training. Only in this way these women have a chance to escape from the vicious circle they find themselves in.

Violations of women's housing rights

Violations by non-State actors

33. As has become clear from the above, in many cases women's housing rights are violated by private persons. Domestic violence is a case in point, where the abuse causes homelessness or inadequate housing conditions, because the core element of security is annihilated.

34. Individuals are responsible for wrecking the security and dignity of women who find shelter in centres and camps for refugees and internally displaced persons.

35. Landlords may violate housing rights by increasing the rent exorbitantly, and some of them abuse the predicament single women find themselves in by threatening them with eviction and demanding sexual favours when the rent is overdue.

36. Communities violate women's housing rights by their traditional views and "personal" laws that favour men and stipulate that women cannot inherit, own or rent land or housing. They fail to see that the world is a changing place and culture should change with it. The sheer number of families headed by single mothers makes it impossible to stick to certain traditions. Failure to adapt not only does injustice to the women, but also to those who depend on them.

Violations by States

37. The most obvious situation whereby housing rights are violated by States is where forced evictions are carried out by State agents themselves, or when the authorities condone the evictions carried out by others. In view of the vulnerable position of homeless girls and women, Governments should take particular care that, when relocation of people is unavoidable, secure and adequate alternative housing is made available.

38. In cases where the direct perpetrators are private parties, States are also responsible for the violations when they do not show due diligence.[8] The housing rights of women should be protected against abusive husbands, relatives, landlords and employers. If violence occurs, States must investigate, prosecute and punish the perpetrators. In any case, there should be enough and adequate shelters where women and children can find at least temporary relief and security.[9] Moreover, new insights are needed with regard to housing rights in cases of domestic violence. Laws are called for that do justice to the situation of the victim. She and her children should be the ones who may stay in the family home, while the perpetrator is faced with interdicts that compel him to leave the premises, or even the whole neighbourhood.[10]

Conclusion

39. Access to and enjoyment of housing is different for women and men. Traditional and cultural views on women's role in society handicap women and place them at a disadvantage when they try to gain access to housing. Women who have to fend for themselves, like divorcees, widows and single mothers, are particularly hard hit when they are faced with low wages, cultural impediments as regards owning or renting a house, or gender biased inheritance laws. The concept of affordability of housing is often based on the average income, which is in fact the average income earned by men, not by women.

40. Lack of services and facilities hits women harder than men because of the stereotyped role women play in society. Even in developed countries, women are still the ones who are burdened with household chores and taking care of the children, the sick and the elderly. In countries where facilities like running water, drainage, heating, ventilation and garbage collection are inadequate or non-existent, women not only have an extra burden, but they also run the risk of their health being impaired.

41. For women, security and dignity first and foremost determine the adequacy of housing. Abuse at home, especially at the hands of the partner, renders the housing situation inadequate, no matter how luxurious or well-equipped a house may be.

42. Closely interlinked with security is independence. Women, and their children, should have the choice and the possibility to live on their own. Only an independent, individual right to adequate housing can enable women to be in charge of their own housing situation.

Notes

[1] In Global Strategy for Shelter to the Year 2000, of 1988 (A/43/8/Add.1), the United Nations General Assembly already considered that adequacy is determined by several factors like privacy, security, basic infrastructure and location, all at a reasonable cost. In General Comment No. 4 on the right to adequate housing (E/1992/23), the Committee on Economic, Social and Cultural Rights recognizes that adequate housing includes legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

[2] See the reports of the Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, e.g., her preliminary report (E/CN.4/1995/42).

[3] The Special Rapporteur on the right to adequate housing, Justice Rajindar Sachar, explains this most aptly when he states that women are essentially homeless because: "in most countries of the world women have neither a right to the home in which they were born nor to the home they live in after marriage", E/CN.4/Sub.2/1995/12 of 12 July 1995, para. 46.

[4] Particularly well-known are cases of Philippine girls who were abused by their Kuwaiti employers.

[5] Accommodation problems are not only found in poor countries, but also in industrialized countries like the Netherlands. Female asylum-seekers complain about sexual intimidation and abuse, which is caused primarily by the fact that unaccompanied women are not housed separately, but have to live in quarters together with unrelated males or even males who have been their enemies in their home countries. Most centres have communal showers and latrines (i.e. not segregated by sex), which increases the feeling of insecurity. See, for example, *Vluchtelingen Organisaties in Nederland* (Refugee Organizations in the Netherlands), *Vrouwen in Asielzoekkerscentra; een ongevraagd advies* (Women in Asylum-seekers' Centres; Unasked-for Advice), Utrecht, December 1996.

[6] Both UNHCR and the Representative of the Secretary-General on internally displaced persons are well aware of the problems girls and women face. See, for example, the UNHCR Guidelines on the Protection of Refugee Women, EC/SCP/67, 1991, and the reports of Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons.

[7] For example, in Toronto, Canada, twice as many single-parent families have to make use of the shelter system than two-parent families. In 1988, 24 per cent of the families in the shelters were female-headed; in 1996, this number had increased to 37 per cent. See, Taking Responsibility for Homelessness; An Action Plan for Toronto, Report of the Mayor's Homelessness Action Task Force, January 1999, pp. 27 and 54.

[8] This became clear by the *Velásquez-Rodriguez v. Honduras* case where the Inter-American Court of Human Rights ruled that the Government was held responsible for the disappearance of individuals, although the actual abductions had been carried out by private persons. Judgement of 29 July 1988, OAS/ser.L.V./III.19, doc. 13.

Also article 18 of the Maastricht Guidelines on "Acts by Non-State Entities": "The obligation to protect includes the State's responsibility to ensure that private entities or individuals, ... do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise *due diligence* in controlling the behaviour of such non-State actors" (emphasis added), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, Utrecht, 1998, p. 9.

[9] See Maastricht Guidelines, articles 22-32 on "Remedies and Other Responses to Violations", SIM Special No. 20, pp. 10-12.

[10] A recent example of such a law is the German *Gewaltschutsgesetz (Gesetz zur Verbesserung des zivilgerichtlichen Schutzes bei Gewalttaten und Nachstellungen sowie zur Erleichterung der Überlassung der Ehewohnung bei Trennung)* that entered into force on 1 January 2002.

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of General Discussion on article 3 of the Covenant: equal right of m a and women to the enjoyment of economic, social and cultural rights set forth in the ICESCR

Monday, 13 May 2002

EQUALITY AND RIGHTS:

ARTICLE 3 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Background Paper submitted by Marsha A. Freeman, Director, International Women's Rights Action Watch (USA)* **

* The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

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INTRODUCTION: THE NEED FOR A GENERAL COMMENT ON EQUALITY*

The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant[1]

1. Article 3 of the International Covenant on Economic, Social and Cultural Rights provides for equality in the enjoyment of all the rights stated in the Covenant. The Committee on Economic, Social and Cultural Rights has taken this article seriously but has yet to examine the obligation closely. Many of the Committee's reviews of country reports have included questions, and produced concluding observations, on issues pertaining to women's enjoyment of human rights. However, a clear framework for addressing these issues has yet to be developed.

2. As Philip Alston[2] remarked in a forum at the World Conference on Human Rights in 1993, no government has ever granted human rights solely of its own volition. Almost invariably, rights are granted only when citizens claim them.[3] As to women, this premise is incontrovertible. As has been documented by countless scholars and activists in the last two decades, women's human rights have been at best ignored, and more often overtly denied, since time immemorial. And given their historic invisibility in the "mainstream" of human rights activity for the last 50 years, general progress in human rights does not automatically benefit women. It cannot be assumed that changes in law and policy, made without attention to women's specific circumstances and the consequences in their lives, will have a positive impact on their situation.[4]

3. A framework for addressing obligations under article 3 is necessary to provide for consistency and specificity in the Committee's treatment of equality issues under every substantive article of the Covenant. It would give to governments an unequivocal mandate to attend to equality issues as a matter of normative rights, indicating that every effort to implement the Covenant must include positive attention to the elimination of discrimination with respect to enjoyment of particular rights.

4. This paper is submitted in support of efforts to provide a framework for application of ICESCR article 3, in the form of a General Comment on Equality between Women and Men in the Enjoyment of Economic, Social and Cultural Rights.

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THE TERMINOLOGY AND THE CONTENT OF EQUALITY

5. The language of ICESCR article 3 derives directly from article 2 of the Universal Declaration of Human Rights.[5] Despite having been enshrined in this basic human rights instrument, equality between women and men is honoured more in the breach than in the observance.

6. The official account of the debate on adoption of this provision in the Third Committee indicates the scope of the problem and the necessity of a separate provision on equality between women and men:

> 84. Some representatives thought that article 3 duplicated article 2, paragraph 2, and that the adoption of a special article relating exclusively to the equality of men and women might cause doubt on the effect of the other anti-discrimination provisions contained in article 2. It was maintained that the application of absolute equality of the economic rights of men and women might jeopardize national productivity and encourage too many women to work outside their homes. It was usually less profitable for the employer to employ women, while in their capacity as wives and mothers women were needed in the home, especially by the children.
>
> 85. On the other hand, many representatives thought it was essential to retain article 3. The Committee must respect the wish of the General Assembly, expressed in resolution 421 (V), concerning the inclusion of such a provision. While article 2, paragraph 2, prohibited all discrimination based on sex, the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights; for example, it would be unrealistic to allow women to hold public office if they did not have the same opportunities as men to acquire the necessary training. Moreover, even if article 3 overlapped with article 2, paragraph 2, it was still necessary to reaffirm the equal rights of men and women. *That fundamental principle, which was enshrined in the Charter of the United Nations, must be constantly emphasized, especially as there were still many prejudices preventing its full application* [emphasis added].[6]

7. These statements, dating from 1962, retain currency. While prohibition of discrimination as stated in article 2 (2) is critical, "equal enjoyment" of rights encompasses a larger vision of what it means to have rights. As discussed below, the terminology of "enjoyment" implies recognition of full human capacity - for work, leisure, reproduction, and above all for making and acting upon choices.

8. In the 26 years since the Covenant entered into force, many countries have adopted constitutional provisions and laws that purport to enshrine equality as a fundamental principle. Some laws provide for formal equality in a positive manner, such as requiring equal property division upon divorce, equal inheritance rights for sons and daughters or for surviving husbands and wives, or equal pay for work of equal value. Prohibition of discrimination in the workplace (promotion and training opportunities, wages, issues surrounding maternity leave), in education,

or in assignment of government benefits, reaches for equality through the operational principle of non-discrimination. Neither the positive nor the prohibition approach can be successful without consideration of gender, the social construct of role expectations that pervades systems, institutions, and human attitude towards women and men.[7]

9. Reliance on expressions of formal equality, or on legal prohibition of discrimination, obscures the real issues of inequality - institutional discrimination and unequal power relationships that result in oppression and exclusion. Implementation of ICESCR article 3 requires governments to identify the sites of discrimination in economic, social and cultural endeavours and to immediately address the legal, material and cultural obstacles to equality.

The substance of equality

10. The language of article 3 indicates that equality is a value that must be integrated into every aspect of Covenant implementation. Government obligations to respect, to protect, and to fulfil[8] economic, social and cultural rights are grounded in a fundamental requirement to ensure that all persons within the ambit of its actions be treated in a manner that guarantees equality in enjoyment of rights. Enjoyment of rights refers immediately and unequivocally to the substance of the rights as well as to their formal expression, to outcomes and consequences as well as to access and opportunity.[9]

11. The "enjoyment" of human rights may be measurable in some respects, and to the extent that it is measurable, "equal enjoyment" can be determined as a matter of numbers.[10] But numbers never tell the entire story. For example, equal literacy rates for men and women say nothing about the content of their education and expectations for its use. Equal wages for men and women doing a particular type of work do not indicate their comparative working conditions or work history (how long did each work in this job before achieving this wage?). Formal equality provisions and statistical indicators provide only a verbal and numerical framework. States parties to the Covenant have an obligation to provide the legal and material means for women to enjoy rights on an equal basis with men, and to address the cultural and structural issues that create obstacles to exercising rights.

12. To "enjoy" a right means just what the English word implies: to live in it, to express it, to use it, and above all, to be able to claim it. Enjoyment of a right cannot be static. Nor can equality in enjoyment of rights be static. As to every aspect of a particular right, the questions must consistently be asked: Are women allowed to live this right? to express it freely? to use it? What are the specific obstacles - material conditions, laws, cultural expectations - to women's enjoyment of the rights, and how can they be removed? What practical effect will a particular law or policy change have on women? What must we do to eliminate the current disadvantage women face as a result of past discrimination? How do we maintain attention to equality as economies and cultures change? In other words, are women treated with full respect for themselves as human beings and for their rights as articulated in the Covenant?

13. Because women's enjoyment of every aspect of rights is affected by the cultural construct of gender, equality cannot be addressed adequately without attention to culture and to gender. Development expert Bina Agarwal suggests the comprehensive nature of gender as a construct that pervades public and private economic, social and political interactions.

"Gender relations (like all social relations) embody both the material and the ideological. They are revealed not only in the division of labour and resources between women and men, but also in ideas and representations - the ascribing to women and men of different abilities, attitudes, desires, personality traits, behaviour patterns, and so on."[11] Social and cultural expectations based on identification as male and female are at the heart of discriminatory laws, policies, actions, and failures to act. These gendered expectations place women at a fundamental disadvantage with respect to freedom to act as fully capable adults, to participate fully in economic and political development, and to make decisions concerning their welfare and that of their families. They perpetuate inequality.

14. Inequality between women and men is a result of the individual and systemic practice of sex discrimination. Sex discrimination is the differential treatment of women based on their biology, such as the failure to provide for maternity-related health care where men receive care for all medical conditions, including those that affect only men, or refusal to hire women because they could become pregnant. Sex discrimination is also based on stereotypical assumptions, such as the refusal to hire women or tracking them into permanently low-level jobs because they are seen as a group to be primarily wives and mothers and less likely than men to be dedicated to their work. And it is based on unacknowledged issues of power retention, exemplified by failure in many systems to provide property rights or equal legal capacity for women. Acknowledgment of all these assumptions and forms of oppression is essential to the elimination of discrimination.

15. The elimination of discrimination against women is a fundamental operational precondition of equality.[12] In this context reference to the Convention on the Elimination of All Forms of Discrimination against Women is critical to effective implementation of the ICESCR.[13] The CEDAW Convention identifies the obstacles to women's equal enjoyment of human rights, framed as sites of discrimination in policy and practice. Each article of the CEDAW Convention that pertains to economic, social or cultural rights includes language indicating significant factors in the gender aspects of those rights. The CEDAW Committee's General Recommendations - most recently, General Recommendation No. 24, on health - elaborate on this language, providing more detailed guidance for addressing discrimination as to certain rights. The language of the Convention and of the General Recommendations suggests specific opportunities for changing law and policy and for considering practical matters such as the design of service delivery and administrative systems to avoid disadvantage, exclusion or mistreatment of women and girls.

Economic development and equality

16. Equality in enjoyment of economic, social and cultural rights is a core development issue. Seventy percent of the world's poorest people are women.[14] Poverty is a consequence of failure to protect and promote human rights - not only economic and social rights, but political and civil rights as well.

17. Amartya Sen characterizes fundamental rights as "freedoms" that are instrumental to development as well as its desired result. Seeing individuals as agents of their lives rather than potential recipients of "the benefits of cunning development programmes", Sen notes that freedoms are inextricably linked with one another: "political freedoms … help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate

economic participation ...".[15] Sen identifies five instrumental freedoms as critical to individual agency and to sustainable development: (1) political freedoms, (2) economic facilities, (3) social opportunities, (4) transparency guarantees and (5) protective security.[16] If development policy fails to extend all these freedoms equally to the entire population, development becomes (often systemically) distorted and unsustainable.

18. Policies that seek undifferentiated national income and consumption growth can place an extra burden on women, both by failing to provide for family needs such as child care and health facilities, and by focusing on increasing productivity in sectors in which women are exploited or are excluded from deploying their labour. Gendered traditions relating to production can mean that a shift to cash or export cropping from subsistence or local market farming, or from farming to manufacture, can shift resources from women to men. In communities where women are primarily responsible for feeding the family, this form of development reduces women's power in the household as well as having detrimental effects on food security and nutrition. Women's employment in free trade zones increases national productivity figures but is notoriously exploitive.

19. Gross Domestic Product as a primary indicator of growth, fails to differentiate as to the condition of individuals within households and communities. Economic growth in China, for example, has not noticeably diminished the level of neglect and discrimination against girls in Chinese households - resulting in what Sen refers to as millions of "missing" women.[17] Even more refined research approaches evaluate economic well-being on a household basis, without addressing heterogeneous preferences or unequal distribution of resources within households. As Naila Kabeer notes, "a gender perspective on poverty reminds us that household income cannot be equated with individual well-being."[18]

20. Poverty eradication requires that economic, social and cultural rights be respected, protected and fulfilled as between members of households and members of communities. Recognition of rights implies recognition of the capacity for choice, the ability to act in the best interest of self, family and community. Recognition of that capacity results in a rebalancing of interests within the family, allowing for greater respect for women and improved access to resources and opportunities. Sen notes that where women have increased choice in access to resources and to education, their own well-being improves, fertility drops and child survival increases.[19]

Equal Access/ Equal Outcome

21. Conceptualization of equality as a matter of formally providing access or opportunity leads to policy that fails to address the entire problem. The equal access approach often does not result in equal outcomes. Securing for women and men equal access to, for example, health care (ICESCR article 12) or primary education (ICESCR articles 13 and 14), often does not result in equal outcomes. Attitudes and quality of staff, failure to tailor programmes to realities of women's working hours or family requirements, and content of educational programmes has a profound effect on outcomes. While the failure of equal access to produce equal outcomes is frequently attributed to a lack of "truly equal" access, *there is nothing inherent in equal access that corrects for past inequalities or automatically ends discriminatory attitudes, treatment and delivery systems.*

22. Policies and programmes that aim to secure equal outcomes for men and women also must include special measures to eliminate the effects of discrimination: intensive efforts to recruit women; long-term support for women's training, promotion and retention; monitoring retention and progress; and remedies for discriminatory treatment. The Covenant does not explicitly refer to this requirement of implementation, but it is implicit in every obligation.[20] As CEDAW Committee expert Beate Schoepp-Schilling notes, the obligation to take "all appropriate measures" to eliminate discrimination against women, by definition includes a requirement to remedy the effects of past discrimination. Any other approach renders the language of treaty obligations meaningless.[21] The ICESCR requires States parties to "take steps … with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (art. 2 (1)).

23. An effective approach to equality requires a reordering of traditional conceptual frameworks. Historically, governments and many advocates relied on the simplest concept, the "sameness" analysis, to analyse women's claims of discriminatory treatment. According to this approach, individuals are entitled to the same treatment only if their situation is the "same", and different treatment is warranted if they are differently situated. This approach is both blindly mechanistic and in itself discriminatory, in that it eliminates examination of the nuanced realities of people's lives. One of the most egregious examples of this analysis was the 1976 US Supreme Court decision in *General Electric Co. vs. Gilbert*,[22] holding that failure to provide insurance coverage for pregnancy and childbirth, was not sex discrimination. The Court stated that since non-pregnant women were treated the same as men under the company's insurance policy, no discrimination existed; and that it was appropriate to treat pregnant women differently as they constituted a different class of employee. (The US Congress rectified this gross misreading of reality with passage of legislation mandating maternity coverage.)[23]

24. In the 1970s and 1980s many Northern-based feminists, accepted the "sameness" analysis out of concern that emphasis on women's biological and circumstantial difference from men would work against them as they sought to establish new opportunities in opposition to traditional career and family expectations. But it became clear that denying difference did not necessarily improve women's opportunities - especially since that approach precluded examination of deep-seated, unspoken attitudes and customs that work against women. Theorists from the global South have been pointing out for over a generation the injustice that results from failing to acknowledge women's different circumstances and the traditional assumptions that cause and reinforce them.[24]

25. Naila Kabeer, for example, holds that "the gender dimension of poverty occurs ... because women and men experience poverty differently and unequally".[25] She also notes that a woman's socio-economic class significantly affects her level of empowerment in comparison to other women.[26] In *A Field of One's Own: Gender and Land Rights in South Asia*, Bina Agarwal has addressed specific cultural and legal exclusionary practices in South Asia that differentiate South Asian women's experiences from those of women in other regions of the world.[27] Everywhere in the world, indigenous and minority women live with the effect of race discrimination multiplying the effect of sex discrimination.

26. A comprehensive, ultimately just approach to equality must embrace an understanding of the areas in which women are or might be similarly situated with men; areas in which acknowledging their physical and situational differences are critical to their enjoyment of rights; the cultural constructs that impede enjoyment of rights; and the impact of class, race, and experience on women's enjoyment of rights.

27. "Equal enjoyment" of human rights implies quite clearly equality between women and men rather than a contest between them. It implies respect for equal capacities and a requirement of equality in allocation of resources. Redressing the imbalance of economic, social and cultural power between women and men would result in men no longer having access to a disproportionate share of resources and services at the expense of women. Equality in allocation cannot be seen as a violation of rights - it is only a loss of privilege. The essence of human rights is that no person holds a privilege of greater enjoyment of rights than another.[28]

Institutionalizing equality

28. An institution is the physical and intellectual space in which policies are made and implemented. The cultural and socio-political conditions that affect policy must be acknowledged as integral to any institutional framework. Equality must be built into the intellectual and ethical framework of institutions, and policy must be based on the right to be treated without discrimination. Minor adjustments to achieve particular outcomes will not solve the problem.

29. The nature of institutional administration, structures and instruments is critical to the equal enjoyment of rights. Policy formulation and adjustment, while extremely important, are not the whole solution to discriminatory attitudes, practices and patterns. Administrative communication flow, education and training of personnel, and supervision of service delivery are critical elements of "lived" equality for which a State party is obligated.

30. Human rights frameworks are premised on the position of the state as the primary institutional actor responsible for implementation of human rights obligations. With the growth of international markets and trade organizations, international financial institutions, and transnational corporations as arbiters of development and centres of economic power, the role and capacity of the state to meet certain human rights obligations has been called into question.

31. The Committee on Economic, Social and Cultural Rights has noted the rising importance of these actors in the accumulation and distribution of resources.[29] It cannot be assumed that people who have been historically disadvantaged with respect to resource allocation and access will benefit from economic growth without state interventions to ensure equality. Indeed, structural adjustment policies and unregulated business development frequently make their situation worse. State interventions must be designed to address equality and rights issues specifically, recognizing and building upon women's capacity as citizens - active agents of development, rather than passive recipients - in relation to state and other institutions.[30]

Obligations to respect, to protect, and to fulfil human rights

32. Implementation of the ICESCR requires that States parties act to respect, protect, and fulfil the stated rights.[31] South African attorney Sandra Liebenberg provides useful examples of the nature of these obligations, as they pertain to gender, from her country's experience.

33. In essence the obligation "to respect" ... rights requires the state not to act in any way that is inconsistent with the enjoyment of the rights, such as failing to include women as potential beneficiaries of State programmes to redistribute wealth, including land. Liebenberg notes in this respect that "the State should not permit common law or customary law rules with a similar exclusionary effect to remain in place ... [such as] customary law provisions which restrict a woman's capacity to own, control and inherit rights in property in her own name."[32]

34. The duty to protect rights requires adoption of laws and policies that prevent third parties from infringing on or denying women's human rights, such as legislation prohibiting discrimination in employment, protection of equality in the family,[33] and comprehensive domestic violence laws. Such protections are incomplete without incorporation of adequate remedies for discriminatory practices.[34]

35. The duty to fulfil requires States parties to take positive action to provide services and goods, with a view towards meeting certain minimum standards of subsistence, and with the understanding that the cost issues warrant a standard of effort concomitant with a country's resources.[35] States have an obligation to maintain a certain level of human rights fulfilment even while devolving central government functions to localities, and in the face of demands by international financial institutions that they make greater efforts to balance their budgets. With respect to the demands for structural adjustment and poverty reduction strategies, States must analyse all program proposals in light of their specific impact on women's equal enjoyment of rights.

36. The principle of progressive implementation clearly does not apply to the premise of equal enjoyment of rights under ICESCR article 3. The language of article 3 is mandatory. Progressive implementation applies specifically to the articles in Part III of the Covenant and not to the cross-cutting issues articulated in Parts I and II.[36]

37. The terms of the CEDAW Convention underscore the obligation to take measures to "eliminate discrimination" in all endeavours on which State policy can have an effect, immediately and unequivocally. While the CEDAW Committee has acknowledged the constraints imposed by lack of resources, governments are not permitted to use poverty as an excuse for failure to deal with discrimination.[37]

EQUALITY ISSUES ON THE RECORD

38. The Committee's concluding observations, analysing the condition of economic, social and cultural rights in each country under review, identify the notable accomplishments and some of the remaining inadequacies in Covenant implementation. Many of the Committee's observations have touched upon issues of equality in the enjoyment of these rights.

39. The Committee has noted both the instances in which national laws and policies undercut or render ineffectual the promise of gender equality guaranteed by the Covenant, and instances of successful efforts to deal with discrimination. However, without a consistent flow of information on gender issues and a framework for using the information, the approach has been less than comprehensive. A General Comment on Equality would provide a framework for consistent and comprehensive attention to these issues.

40. Many of the Committee's questions and concluding observations have included insightful identification of discriminatory institutional structures and trends in the form of traditional attitudes, ineffective delivery systems and tolerance of discrimination. The Committee has almost from its inception welcomed input from NGOs concerning implementation of rights in countries under review. Information from international and national gender-focused NGOs has been used in more recent years to track positive and negative trends in the equal enjoyment of the rights articulated in the Covenant. The Committee also has cited information from State parties' reports to CEDAW in its Concluding Comments, most recently to Mauritius (07/10/96) and Saint Vincent and the Grenadines (02/12/97).

41. The Committee's concluding observations have noted positive efforts and results in a number of countries. For example, as to Tunisia, the Committee noted:

> The Committee welcomes the achievements in the field of better promotion and protection of the economic, social and cultural rights of women, as a result of which women are able to participate in the economic and political life of the nation, including by owning property, engaging in economic transactions, voting and being elected to public office. In addition, these achievements have contributed positively to family life by making polygamy illegal and has further promoted equality between men and women by removing all legal recognition of so-called "crimes of honour".[38]

42. Government efforts to promote equal enjoyment of human rights and specific legal and policy changes are regularly acknowledged in the concluding observations. The Netherlands was cited positively for its efforts to promote equality in education, but the Committee noted continuing inequality in the workplace.[39] The Dominican Republic's "measures ... to improve the situation of women", were noted with appreciation, "in particular measures allowing them to own property and to benefit from the medical insurance of their partners in case of de facto marriages and from land distribution in the framework of the agrarian reform", although "the Committee remains concerned that women do not fully enjoy their economic, social and cultural rights under the Covenant".[40]

43. Recommendations for improvement in implementation of women's economic, social and cultural rights are greater in number. A table indicating instances in which the Committee has found a State party's implementation efforts wanting is attached as Annex A. The discussion in paragraphs 44-48 refers to the contents of that table. Further discussion in the Annex examines trends in the Committee's findings, specific examples under the substantive articles, and sites of discrimination not yet examined by the Committee.

44. The Committee has identified a number of sex-based discriminatory practices and attitudes for which States parties have responsibility. The most common finding has been the centrality of cultural and traditional practices, attitudes and beliefs to the persistence of sex discrimination.

45. Tradition and cultural factors provide the underpinnings of discriminatory laws and official policies and undermine non-discriminatory legislation and constitutional guarantees of equality. The failure of a State party to implement existing legal provisions, the inadequate use of mechanisms that prohibit discrimination, or the hesitancy of officials to intervene in criminal behaviour against women (the Russian Federation 20/05/1997, Togo 09/05/2001), frequently are identified as based on cultural factors. More specific examples of both statutory and customary discrimination are included below in the analysis of the Committee's comments regarding the substantive articles of the ICESCR.

46. The Committee has identified several cases of discrimination that result from inadequate or incomprehensive strategies to end discrimination (Italy 23/05/2000, United Kingdom of Great Britain and Northern Ireland 04/12/97). Another reason discrimination persists is the failure to collect (Finland 5/12/96, Venezuela 11/05/2001, Tunisia 14/05/99, Sweden 07/06/95, Sudan 01/09/2000, Jordan 01/09/2000, Egypt 23/05/2000), analyse (Netherlands 16/06/1998), or disaggregate by sex (Azerbaijan 22/12/97) data that might identify discrimination. Even when data are available, the Committee frequently expressed concern that women lack access to them (Sri Lanka 16/06/98). The most frequent data requested by the Committee are statistics regarding employment and domestic violence. The failure to address de facto discrimination against women was also commonly cited, as in the Concluding Observations to Bolivia, Honduras, Argentina, Switzerland, Zimbabwe, the United Kingdom of Great Britain and Northern Ireland, and Portugal.

Industrialized nations: no release from responsibility

47. Though the noted incidence of sex-based discrimination has been greater and often more severe in developing countries, the Committee has identified patterns of discrimination in industrialized nations as well. The most common problem the Committee has identified is discrimination against women in the workplace. The Committee expressed concern with a number of industrialized nations (see Table, Annex A) for their failure to ensure women equal remuneration and benefits for equal work, as well as their failure to remove obstacles from the promotion of women to prominent managerial and administrative positions, in both the public and the private sectors.

48. The persistence of domestic violence against women also has been consistently identified by the CESCR as a major problem in industrialized nations. Domestic violence is listed as a separate column in the Table to indicate the number of industrialized nations that have been asked to review, amend, develop, or implement policies and remedies that protect women both from domestic violence and from its detrimental effects on their physical and mental health. The Committee has recognized that domestic violence affects a woman's right to an adequate standard of living as well. In the case of Canada, the Committee recommended in 1998 that the Government review its housing policy, which discriminates against women seeking to escape domestic violence (Canada 10/12/1998).

TOWARD A COMPREHENSIVE EQUALITY FRAMEWORK

49. A General Comment on Equality can readily be developed based on the information already processed by the Committee in its prior country reviews. Much of the evidence of discrimination noted by the Committee in its concluding observations is the product of government failure or incapacity to acknowledge the sources of discrimination and to deal with the necessities of institutional change. Governments fail to respect women's economic, social and cultural rights by, for example, establishing programmes that exclude women from exercising their rights, such as title to housing. They fail to protect women, by bowing to perceived cultural imperatives rather than attempting to encourage change in the culture, as in failing to establish legal protection and physical safety nets for women subject to violence in their homes. They fail to fulfil obligations of equality, by failing to allocate adequate resources to provide women with services and opportunities to which they have a right under the Covenant.

50. In developing a General Comment on Equality, the Committee could refer to the provisions of the CEDAW Convention to illuminate the obstacles to equality and particularly to support an approach that alludes to discriminatory effect.[41]

SUGGESTIONS FOR CONTENT OF A GENERAL COMMENT, PER ARTICLES OF THE COVENANT

51. This paper does not purport to provide an exhaustive outline of all the potential matters to be covered in a General Comment on Equality. The matters cited in this section are representative of suggested approaches to particular issues.

52. With respect to all the rights included in the Covenant, the Convention on the Elimination of All Forms of Discrimination against Women and the General Recommendations of the CEDAW Committee will provide indications of many of the specific components of equal enjoyment of rights.[42]

53. Culture, tradition, religion, and women's human rights. The Committee has recognized in a number of its concluding observations that women face cultural obstacles to their enjoyment of human rights and that religious law cannot be invoked as an excuse for deprivation of rights, despite the lack of explicit language to that effect in the Covenant. A General Comment on Equality might refer specifically, in this context, to CEDAW article 5, pertaining to the obligation to address culture, tradition, and stereotyping that prevent women's full enjoyment of their human rights.

54. National machineries and other mechanisms for promoting and monitoring equality. Many governments have established a national machinery, bureau, or ombud office with a mandate to monitor sex discrimination and promote equality. While some of these efforts are credible and have been effective, others are merely rhetorical. The General Comment might refer to some issues that should be addressed as to efficacy of national machineries: level of funding; status of the machinery within the government (Ministerial level? Inter-ministerial

committee? Department - of what?) Reports to whom? Staffing? Breadth of mandate? Does the office produce research and policy recommendations of its own? Responsibility of other ministries to coordinate with it? Who monitors and how is its performance monitored?

55. Right to work, working conditions, and the right to organize. A General Comment might include, with respect to these rights articulated in articles 6, 7, and 8, statements concerning:

- Pregnancy: States parties have an obligation to prohibit the use of pregnancy tests or questions concerning likely or actual pregnancy as a method of eliminating women from consideration for employment. Women may not be dismissed on grounds of pregnancy.

- Wages: States parties have an obligation to provide by law for equal pay for equal work (wage equality) and for equal pay for work of equal value (wage equity). They must provide for a system of job evaluation that accounts for women's clustering in particular occupations, with the common result of that occupation being under waged relative to required skills.

- Working conditions: States parties have an obligation to provide safe and healthy working conditions for men and women. In most if not all countries, certain industries are disproportionately staffed by women, and to the extent that working conditions in those industries are less safe, less well regulated than others, or unregulated, they constitute sex discrimination. While the conditions in *maquiladoras* are globally notorious, the issues of unsafe conditions, low wages, and obstacles to organizing for collective bargaining in female-dominated industries are not limited to *maquiladoras* and must be addressed.

- In many countries a very high proportion of women work in the informal sector. States parties have an obligation to protect the human rights of these workers. Their rights to organize self-help groups, to work without harassment by police, and to be treated fairly by dispute resolution authorities (community or statutory courts and mediation mechanisms). Social security systems should include mechanisms to provide coverage for them as self-employed workers.

- Affirmative action to remedy the effects of past discrimination in employment (recruitment, hiring, wage disparities) and to ensure fairness in training and promotion opportunities.

- Elimination of sexual harassment in the workplace.

- Reference could be made to the role of corporate codes of conduct in ensuring equality in the workplace. Corporations must be made aware of the international human rights obligations of their host country and the necessity of incorporating human rights principles into their corporate operating procedures.[43]

56. Right to education. With respect to education, the Committee may draw on its own considerable experience and General Comment No. 13, as well as on the mandates in a number of international instruments and the provisions of CEDAW Convention article 10 and the concluding comments of the CEDAW Committee. Key matters that could be addressed include:

- Basic approaches to equal enjoyment of the right to education include reformulation of curricula and educational materials to eliminate stereotyping and gender bias, allocation of equal resources to girls' education, and special encouragement to girls to stay in school.

- Equality in education also requires significant policy commitments to recruitment of skilled teachers and training designed to help teachers understand gender issues in the curriculum, the individual classroom, and the entire school community.

- Achieving equality in education requires addressing the practical and cultural issues that prevent women and girls from attending school, such as son preference, early marriage, and confining girls physically to household or narrow community perimeters.

57. Adequate standard of living. Reference could be made to:

- Resolution 2000/13, "Women's Equal Ownership of, Access to and Control Over Land and the Equal Rights to Own Property and to Adequate Housing", adopted by the Commission on Human Rights in its fifty-sixth session (17 April 2000).

- CEDAW Convention, article 14. This refers specifically to rural women's rights to participate in development planning, agrarian reform and resettlement schemes, and living conditions (housing, sanitation, electricity, water, transport and communications).

- The Committee has adopted General Comments pertaining to the right to adequate housing, the right to food, forced evictions, and the rights of older persons.[44] The content of the General Comment on Equality underscores the issue of equal enjoyment of rights articulated in those General Comments and might refer to them specifically.

58. Right to Health. General Comment 14, adopted in 2000, notes many of the issues relating to women's right to health that could be underscored in the current General Comment:

- Equality in enjoyment of the right to health requires equal access. Because of women's particular circumstances, access requires removal of legal obstacles (consent requirements, unreasonable regulation, legal restrictions on reproductive health provision) and addressing the practical obstacles such as clinic opening times, locations that are accessible to women with limited transportation, and training health professionals to elicit information respectfully.

- The right to be free of violence in the home and in the community is an essential health issue for women.

- Health policy formulation must be based on analysis that includes gender perspectives in the core discussion, sex-disaggregated data, and commitment to addressing cultural issues that affect women's health, such as harmful traditional practices and culturally imposed limitations on access to facilities and skilled practitioners.

59. Protection of marriage and family. With respect to all issues concerning protection and promotion of the family as the basic unit of society, the General Comment might note that the protection of the family may not be promoted at the expense of the human rights of individual family members. The General Comment could allude to CEDAW Convention articles 5, 9, 15, and 16, and CEDAW General Recommendation No. 21 (nationality, legal capacity, and marriage and family law), as well as International Covenant on Civil and Political Rights[45] article 23 and Human Rights Committee General Comment No. 28.[46] In all discussions of the family and women's roles and rights, it is important to bear in mind that the human rights articulated in all the treaties must be seen as complementary, consistently derived from the language of the Universal Declaration of Human Rights.

CONCLUSION

60. Women's equal enjoyment of economic, social and cultural rights must be based on a comprehensive vision of human rights based on full recognition of human capacity for making and acting upon choices. This approach must attend to substantive as well as formal equality, with attention to eliminating the structural disadvantages that always have impeded women's enjoyment of their rights.

61. A comprehensive approach to equality in enjoyment of rights requires attention to the institutional sites of sex discrimination - economic, social, political and cultural structures that impose limitations on women's choices and opportunities. It also requires gender analysis, an examination of the extent to which socially attributed sex roles and expectations inform assumptions about women and men that result in denial of rights. The Convention on the Elimination of All Forms of Discrimination against Women and its jurisprudence can be taken as a detailed indication of sites of discrimination and an elaboration of the standard of equality stated in the Covenant.

62. The Committee on Economic, Social and Cultural Rights historically has paid particular attention to women's enjoyment of the rights articulated in the Covenant, in both country reviews and General Comments. Adoption of a General Comment on Covenant article 3, will provide the Committee and the States parties with a framework for consistent and regular examination of these issues. It will indicate clearly that attention to equality must be a fundamental element of every effort to promote, protect and fulfil human rights.

Notes

[1] International Covenant on Economic, Social and Cultural Rights, article 3.

[2] Chairperson, United Nations Committee on Economic, Social and Cultural Rights, 1991-1998. Member of the Committee, 1987-1998.

[3] Philip Alston, addressing a working group in the NGO Forum at the World Conference on Human Rights, Vienna, June 1993.

[4] For an extremely cogent and still relevant discussion of this issue, see H. Charlesworth, C. Chinkin, and S. Wright, "Feminist Approaches to International Law", 85 *American Journal of International Law* 613-45 (1991).

[5] Universal Declaration of Human Rights, GA Res. 217A(III), 10 December 1948.

[6] Draft International Covenants on Human Rights: Report of the Third Committee, A/5365 (17 December 1962).

[7] Gender refers to the social roles and expectations assigned to women and men by virtue of their biology. It is an extremely useful concept to apply in analysing the causes, consequences and remedies for sex discrimination and for considering the substantive content of equality. Gendered assumptions lead to sex discrimination. Substantive equality is achieved by deconstructing gender assumptions and providing opportunities, remedies, and new expectations based on respect for the full human capacity of women and men. See discussion below, p. _.

[8] The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 *Human Rights Quarterly* 691-704 (1998) 691-704 at 693 (para. 6). Hereinafter cited as Maastricht Guidelines.

[9] Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), at p. 159, notes that the drafting discussions indicated "certainly a feeling that factual equality should be increased ... [citing the statement of the USSR representative that 'equality of rights ... implied the existence of positive rights in all the spheres dealt with in the draft Covenant']." For a systematic exploration of the content and context of substantive equality in relation to enjoyment of economic, social and cultural rights, grounded in women's experience in several regions, see report of the Women's Economic Equality Project, South Africa Consultation, 7-10 December 2000.

[10] The subject of indicators has been much examined, to no satisfactory conclusion. Raw comparative numbers tell very little of the story as to any issue, and as to equality they illustrate even less.

[11] Bina Agarwal, '"Bargaining' and Gender Relations: Within and Beyond the Household", *Feminist Economics*, 3 (1) 1997, 1.

[12] The term "discrimination" must be used with clarity. In some contexts the term has been subdivided, with reference to "indirect discrimination" presumably as opposed to "direct discrimination." Because this language is not in any of the human rights treaties, its use can lead to confusion. The CEDAW Convention (art. 1) refers to discriminatory "effect" indicating the necessity of examining whether policies and laws that are neutral on their face, in fact have discriminatory consequences when applied or fail to address de facto discrimination despite a nominal intent to do so. "Indirect discrimination" should be understood to refer to discriminatory effect.

[13] The basic definition is provided in the Convention on the Elimination of All Forms of Discrimination against Women, article 1: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." CEDAW, GA Res. 34/180 (18 December 1979). The Maastricht Guidelines cite the CEDAW Convention as the essential standard of equality in enjoyment of economic, social and cultural rights.

[14] _____.

[15] Amartya Sen, *Development as Freedom.*(New York: Knopf, 2000), pp. 10-11.

[16] Ibid., 10.

[17] Ibid., 106-07. "In China", Sen notes, "there is even some evidence that the extent of neglect may have increased sharply in recent years."

[18] Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought*, London: Verso, 1994, 161.

[19] Sen, supra note 12, 190-199. This instrumentalist view of rights, credible but far from comprehensive, has a great deal of currency in economic thinking.

[20] At the time of drafting the Covenant, the language of affirmative action, or temporary special measures to eliminate the effects of discrimination, was in its infancy and had not made its way into international discourse. By the time the CEDAW Convention was drafted, affirmative action had come to the forefront of the discussion. The failure to include this language in a much earlier treaty only indicates that the discourse had not matured, not that the remedy was uncalled for. Craven, supra n. 9 at 184, discusses this matter at length and concludes: "Despite no reference to affirmative action in the text of the Covenant, it is clear from the *travaux préparatoires* that such measures were not intended to be considered discriminatory."

[21] *Achieving the Rights Result: Affirmative Action and the Women's Convention.* Report of the IWRAW consultation, January 1997, p. 2. As of 2001, the CEDAW Committee is in process of adopting a General Recommendation on Article 4 (1) (temporary special measures to eliminate discrimination).

[22] 429 U.S. 125, 97 S.Ct. 401, 50 L.Ed. 343.

[23] Title VII of the Civil Rights Act of 1964 was amended in 1978 to prohibit discrimination on the basis of pregnancy.

[24] See, e.g., Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press, 1994; Kabeer at 141.

[25] Naila Kabeer, 141.

[26] Ibid., 161-162.

[27] Agarwal, supra note 14. Women's power relations with men also may differ by class, ethnicity, national origin, religion, or subculture; and male hierarchies of power have an impact on enjoyment of rights as well. However, Agarwal's point indicates that women's enjoyment of rights must be examined in light of their particular circumstances as well as their generic identity as women.

[28] Consider the discussion in terms of poverty vs. wealth. Increasing poor people's access to resources does not violate the human rights of rich people. It does, however, diminish their privilege.

[29] See, e.g., CESCR Statement on Globalization and Economic, Social and Cultural Rights (unedited version available on www.unhchr.ch/tbs/doc.nst/, 5 May 1998); CESCR Statement to the Third Ministerial Conference of the World Trade Organization (Seattle, 1999) (E/C.12/1999/9; Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10, May 2001).

[30] Sen, supra n. 15, is very eloquent on the subject of individuals as agents of development.

[31] Maastricht Guidelines, supra n. 8.

[32] Sandra Liebenberg, "Gender Equality in the Enjoyment of Socio-Economic Rights: A Case Study of the South African Constitution." Paper presented at the Expert Group Meeting on Promoting Women's Enjoyment of their Economic and Social Rights, Turku, Finland, (EGM/WESR/1997/EP.1, November 1997), p. 14.

[33] CESCR article 10 refers to protection of the family as "the natural and fundamental group unit of society." This article should be read in conjunction with CEDAW article 16, elaborating on the principles of equality between the spouses that are indicated by the CESCR article 10 requirement that "marriage must be entered into with the free consent of the intending spouses."

[34] Ibid., p. 15-16. See also Martin Scheinin ("Women's Enjoyment of their Economic and Social Rights: Conceptual Framework for Discussion"), Expert Group Meeting on Promoting Women's Enjoyment of their Economic and Social Rights, Turku, Finland (EGM/WESR/1997/BP.1, November 1997), p. 11: "all entitlements that are characterized as rights must entail some form of third-party enforcement."

[35] ICESCR article 2 (1); CESCR General Comment 3 (E/1991/23); Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter Limburg Principles), E/CN.4/1987/17, reprinted at 9 *Human Rights Quarterly* 122-134 (May 1987), paras. 21-24.

[36] Limburg Principles, paras. 22, 37, 38, indicate that efforts to eliminate discrimination must be undertaken immediately.

[37] The CEDAW Committee's Concluding Observations consistently indicate that governments are required to attend to the facts and consequences of women's poverty even where general economic conditions are dismal. See, e.g., Concluding Observations: Dominican Republic (A/53/38, paras. 32-353, May 1998), noting the failure to attempt affirmative action to break women's poverty; Concluding Observations: Bangladesh (A/52/38/Rev.1, paras. 409-464, July 1997) noting poor working conditions, failure to monitor and assess gender concerns included in development plans; Concluding Observations: Venezuela (A/52/38/Rev.1, paras. 27-247, January 1997), noting failure to develop programmes to promote women's interests at grass-roots levels, to change laws that perpetuate patriarchal control, and failure to develop a plan to implement the Beijing Platform, "even strategies in such urgent priority areas as poverty eradication."

[38] Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia. 14/05/99. E/C.12/1/Add.36.

[39] Concluding observations of the Committee on Economic, Social and Cultural Rights: Netherlands. 16/06/98. E/C.12/1/Add.25.

[40] Concluding observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic. 12/12/97. E/C.12/1/Add.16.

[41] The Maastricht Guidelines, supra n. 8, para.12, specifically note that "discrimination against women in relation to the rights recognized in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination

against Women." See also Hanna Beate Schoepp-Schilling, "Some Reflections on the Women's Human Rights Dimension of the ICESCR as Compared to the CEDAW", Background Paper for the EU-China Seminar on Perspectives on Human Rights - with Special Emphasis to Women (September 1999).

[42] For more detailed analysis of the de jure and de facto equality issues with respect to particular rights, see *Assessing the Status of Women: A Manual on Reporting under the CEDAW Convention.* (IWRAW, Commonwealth Secretariat, 2d, ed. 1996; second edition revised and reprinted by the United Nations, 1999).

[43] The United Nations Sub-Commission on the Promotion and Protection of Human Rights currently is engaged in a process of adopting a set of Human Rights Principles for Business Enterprises. The most recent draft, adopted in August 2002 (E/CN.4/Sub.2/2002/X/Add.1, E/CN.4/Sub.2/2002/WG.2/WP1/Add.1), includes a comprehensive background note on the evolution of corporate responsibility codes.

[44] Right to Adequate Housing, CESCR General Comment No. 4, 1991; Rights of Older Persons, General Comment No. 6, 1995; Right to Adequate Housing: forced evictions, 1997; Right to Adequate Food (1999). Compiled in HRI/GEN/1/Rev.1.

[45] GA Res. 2200A (XXI), Doc A/6316 (16 December 1966).

[46] United Nations Doc. CCPR/C/1/Add.10 (2000). Note also that a considerable discussion emerged within the last ten years concerning the potential of women's human rights, as articulated in the CEDAW Convention, to be seen as conflicting with the human rights of children as stated in the Convention on the Rights of the Child. This topic was explored at some length in a series of consultations held in 1998 by IWRAW, UNICEF, Save the Children-Sweden, and the United Nations Division for the Advancement of Women. See *Women, Children and Human Rights: An IWRAW Consultation*, January 1998, and *The Human Rights of Women and Children: Challenges and Opportunities* (report of the Expert Group on Using the CEDAW and CRC Conventions, January 1998) (both available from IWRAW).

Annex A

CESCR Findings: Engendering Economic, Social and Cultural Rights

CESCR Concluding Observations Addressed to States Parties Regarding Implementation of Women's Human Rights: 1993-2001*

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
Algeria	Algeria	Togo	Algeria	Germany	Argentina	Algeria	Algeria
Bolivia	Argentina	Australia	Cameroon	Italy	Armenia	Argentina	Bolivia
Cameroon	Armenia	Canada	Canada	Kyrgyzstan	Azerbaijan	Bolivia	Cameroon
Dominican Republic	Australia	Switzerland	Congo	Libyan Arab Jamahiriya	Belarus	Bulgaria	Congo
Honduras	Austria	Cyprus	Dominican Republic	Portugal	Bolivia	Cameroon	Egypt
Iran	Belarus	Dominican Republic	Egypt	Togo	Dominican Republic	Congo	Gambia
Jordan	Belgium	Mauritius	Gambia	United Kingdom of Great Britain and Northern Ireland	Georgia	Cyprus	Germany
Korea	Bolivia	Kenya	Iran	Sudan	Guinea	Dominican Republic	Guinea
Kyrgyzstan	Bulgaria		Iraq	Canada	Honduras	Egypt	Iran
Libyan Arab Jamahiriya	Cameroon		Libyan Arab Jamahiriya		Israel	El Salvador	Iraq
Mali	Canada		Mali		Mali	Finland	Mali
Mauritius	China		Mauritius		Mexico	Georgia	Mauritius
Mexico	Colombia		Morocco		Mongolia	Germany	Morocco
Mongolia	Congo		Paraguay		Peru	Guatemala	Peru
Morocco	Cyprus		Philippines		Poland	Guinea	Republic of Korea
Paraguay	Denmark		Republic of Korea		Republic of Korea	Israel	St. Vincent and the Grenadines
Philippines	Dominican Republic		St. Vincent and the Grenadines		Sri Lanka	Italy	Senegal
Republic of Korea	El Salvador		Sri Lanka			Jordan	Solomon Islands
Sudan	Finland		Sudan			Kenya	Spain
Suriname	Georgia		Suriname			Mali	Sudan
Togo	Germany		Togo			Mauritius	Switzerland
Viet Nam	Guatemala		Tunisia			Mexico	Togo
Zimbabwe	Guinea		Zimbabwe			Mongolia	Tunisia
Egypt	Honduras		Jordan			Netherlands	

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
El Salvador	Hong Kong		Poland			Paraguay	
Gambia	Iceland		Cyprus			Poland	
Guatemala	Iran					Portugal	
Hong Kong	Iraq					Republic of Korea	
Canada	Israel					Russian Federation	
Congo	Jordan					Sri Lanka	
Iraq	Kenya					Sudan	
Netherlands	Korea					Sweden	
Sri Lanka	Kyrgyzstan					Switzerland	
Tunisia	Libyan Arab Jamahiriya					Togo	
United Kingdom of Great Britain and Northern Ireland	Luxembourg					Tunisia	
	Mali					United Kingdom of Great Britain and Northern Ireland	
	Mauritius					Ukraine	
	Mexico					Uruguay	
	Mongolia					Venezuela	
	Morocco						
	Netherlands						
	Norway						
	Paraguay						
	Peru						
	Philippines						
	Poland						
	Portugal						
	Portugal (Macau)						
	Republic of Korea						
	Russian Federation						
	St. Vincent and the Grenadines						
	Senegal						
	Solomon Islands						
	Spain						
	Sri Lanka						

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
	Sudan Suriname Sweden Switzerland Togo Tunisia Ukraine United Kingdom of Great Britain and Northern Ireland Uruguay Viet Nam Zimbabwe						

* This chart contains only specific references to the human rights of women, though a number of observations relating to vulnerable groups, people in poverty and children also are relevant to the rights of women.

CONCLUDING OBSERVATIONS: THE COMMITTEE'S RECORD ON WOMEN[a]

The Committee has questioned governments on a number of gender issues in its country reviews. The following selected examples illustrate some of the matters regularly noted.

Articles 6, 7 and 8: Work, Working Conditions and the Right to Organize

- In the Dominican Republic (06/12/96), Mexico (08/12/99), Poland (16/06/98) and Bulgaria (08/12/99), the Committee noted the persistence of required pregnancy tests and/or the arbitrary dismissal of pregnant women.

- In Armenia (08/12/99), women are more likely to be unemployed than men, even though women are generally more educated.

- The Committee reports that women earn less than men for equal work almost everywhere. In Colombia (06/12/95) and Poland (16/06/98), for example, women earned about 30 per cent less than their male counterparts.

- Sweden (07/06/95), Portugal (Macau) (06/12/96) and Luxembourg (12/12/97) had not ratified ILO Conventions that guarantee women equality in the workforce.

- Women are severely underrepresented in the Solomon Islands (14/05/99) in both the public and private spheres. There are no women at the ministerial or subministerial level, one in 47 Parliament members is a woman, and only three per cent of managers and administrators are women.

- Women are disproportionately represented in maquilas and Export Processing Zones (EPZs) in many countries, such as Honduras (11/05/2001) and Guatemala (28/05/96). These workers face poor working conditions, very low wages, few benefits and no job security.

Article 9: Social Security and Social Insurance

- Women in Togo (09/05/2001) do not have the same rights to social security as men, especially to pension benefits.

Article 10: Protection of Marriage and Family

- In Congo (23/05/2000), adultery is illegal for women, but not always for men. Also, the law promises a woman only 30 per cent of her deceased husband's estate; often, she gets none of it.

- The Egyptian (23/05/2000) divorce law disadvantages women.

- Inheritance laws have been declared discriminatory in Morocco (01/12/2000), Iraq (12/12/97), Cameroon (08/12/99), Tunisia (14/05/99), Togo (09/05/2001), and Sri Lanka (16/06/98). In Sri Lanka, law requires equal inheritance among siblings, but married women are customarily discriminated against.

- A woman's right to transmit her nationality to her child or husband is restricted in Cyprus (04/12/98), Egypt (23/05/2000), Jordan (01/09/2000), Poland (16/06/98) and the Republic of Korea (11/05/2001).

- Switzerland (07/12/98) does not offer its women adequate maternity benefits.

- If women have few rights in marriage, they have fewer in divorce. Women are discriminated against in the dissolution of marriage in many countries, such as Algeria (08/12/95) and the Philippines (07/06/95).

Article 11: Standard of Living-Adequate Housing, Food, and Clothing

- Single female heads of household have not benefited from agrarian reform and government housing in the Dominican Republic (06/12/96).

- Displaced people in Sudan (01/09/2000), most of whom are women and children, have suffered without adequate housing, food, or clothing.

- The Committee considered the "small-house policy" in the United Kingdom of Great Britain (21/12/94) discriminatory against women.

Article 12: Physical and Mental Health

- In the Republic of Korea (11/05/2001), the effects of "son preference" (e.g. induced abortions) restrict women's reproductive rights and are harmful to their physical and mental health.

- Female Genital Mutilation (FGM) persists in many countries, despite measures taken against it. Some of the countries still practicing FGM are: Guinea (28/05/96), Mali (21/12/94), Egypt (23/05/2000), Togo (09/05/2001), Cameroon (08/12/99) and Nigeria (16/06/98). The Committee reported that 50 per cent of Nigeria's young women undergo FGM. That figure is 75 per cent in Mali.

- Domestic violence remains a significant problem in most countries. One third of women in Mongolia (01/09/2000) have experienced domestic violence. The Committee also reported 680,000 cases per year in the United Kingdom of Great Britain and Northern Ireland (04/12/97) and 200,000 cases per year in Israel (04/12/98). The Committee has repeatedly emphasized that estimates are generally much lower than the actual occurrence.

- Illegal abortion is the fourth highest cause of death for women in Mexico (08/12/99).

Article 13: Education

- Women are disproportionately illiterate in many developing countries. In Tunisia (14/05/99), 42 per cent of women are illiterate - almost twice as many as illiterate Tunisian men. Of the illiterate in Gambia (31/05/94), 90 per cent are women.

- Women face both legal and customary obstacles to education. In Mali (21/12/94), women receive only 29 per cent as much education as males. In Gambia (31/05/94), only one third of primary school students are girls and only one fourth of high school students.

Article 15: Cultural Life and the Benefits of Scientific Progress

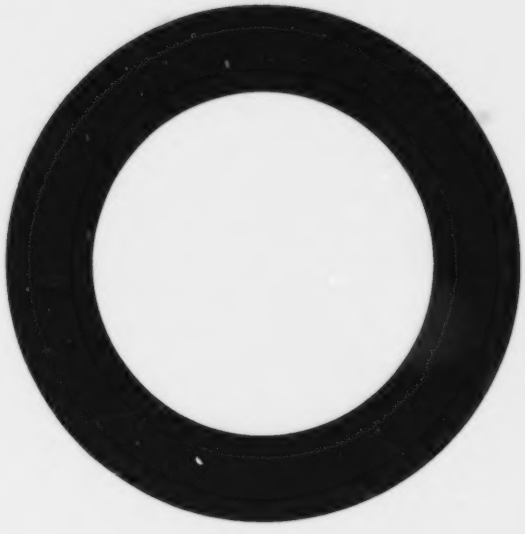
- The Committee has not yet explored in any depth how women are discriminated against in their rights to cultural production, the benefits of science, and intellectual property.[b] It did express concern that women in Iran (09/06/93) were prohibited from studying certain fields such as engineering. This affects their abilities to benefit from science and high-paying jobs in many scientific fields.

- The Committee would certainly find discrimination against women in access to computer technology. A great deal of progress has been made in improving women's access to computer training, but more thorough investigation is needed.

Notes

[a] These lists are representative and do not include all the Committee's conclusions concerning gender issues.

[b] The Committee currently is engaged in development of a General Comment on intellectual property. Research related to a general comment on article 15 (1), right to take part in cultural life, is in process.



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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of General Discussion on article 3 of the Covenant: equal right of men and women to the enjoyment of economic, social and cultural rights set forth in the ICESCR

Monday, 13 May 2002

RE/CONCEIVING THE HUMAN RIGHT TO HOUSING*

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* Issued as submitted.

** The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations. Ms. L. Farha works, researchers and publishes in the area of women's economic, social and cultural rights, particularly on the rights to housing, land and property.

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Introduction

1. The right to housing is one of the most considered human rights in the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR).[1] Much of the foundational analysis and work pertaining to this right was produced in the late 1980s through to the mid 1990s.[2] During this period, the United Nations Committee on Economic, Social and Cultural Rights (hereinafter "CESCR")[3] adopted two General Comments on housing rights, and several resolutions pertaining to this right were adopted by the United Nations Charter based bodies: the Sub-Committee on the Protection and Promotion of Human Rights,[4] the Commission on Human Rights[5] and the Commission on Human Settlements.[6] Moreover, a Special Rapporteur on housing rights was appointed[7] while a number of articles, chapters, and expert meetings on different aspects of the right to housing emerged during this period.[8]

2. From a women's human rights perspective this period of activity on the right to adequate housing is marked by two central characteristics. First, United Nations officials, and human rights advocates - whether focused on economic, social and cultural rights or women's rights - were reluctant to include in their work a conceptualization of housing rights which incorporated women's perspectives. Second, and perhaps as a result, women's housing needs and experiences were not being reflected in the "gender neutral" documents adopted by the United Nations. In retrospect, this is not surprising given that, on the one hand, the economic, social and cultural rights field was and continues to be dominated by men, who only rarely demonstrate an appreciation of women's experiences as they relate to human rights. For instance, at no time has the 18-member CESCR had more than three women members and the Committee's work has only occasionally reflected a deep understanding of women's economic, social and cultural rights.[9] Similarly, until recently, the housing rights advocates working at the international level were predominantly men, as were most of the economic, social and cultural rights advocates who attended the CESCR sessions.[10] In keeping with this, the bulk of the work and literature on economic, social and cultural rights produced by non-governmental organizations (hereinafter "NGOs") pays scant attention to women's experiences in this field. On the other hand, the women's human rights advocates at the international level were principally concerned with and occupied by the struggle to convince the international community that women's rights are human rights. Focused on a cautious agenda of engendering civil and political rights, these advocates had little time or inclination to turn their attention to economic, social and cultural rights, which were still perceived as "second generation" rights, ill-defined and largely injusticiable.

3. It was in this milieu that I first started working to articulate and incorporate women's experiences and needs at the domestic level into legal standards on the right to housing at the international level. This work has been motivated by the belief that for the human right to housing to be meaningful to women it must be analysed and articulated from women's perspectives. This paper provides an analysis of what this means in both theory and practice. Part I highlights the importance of incorporating a substantive understanding of women's equality rights into the content of the right to housing. The second part of the paper provides an overview of how the right to adequate housing has been defined in international law, focusing on the articulation of the right to housing and the constituent right to be free from forced eviction as found in the CESCR's General Comments 4 and 7, considered the foremost legal authority on these rights. These articulations of the right to housing are then analysed from the standpoint of

women's experiences, concluding with suggestions as to how the right to housing and to be free from forced eviction might be defined if women were at the centre of its development. The paper concludes with a modest suggestion regarding the strategic way forward to ensure the international human right to housing has meaning and resonance for women.

PART I. DISCRIMINATION, EQUALITY RIGHTS AND HOUSING RIGHTS

4. In every realm - civil, cultural, economic, political, legal and social - whether in private or public domains, women experience structural discrimination and inequality. This is particularly so with respect to housing. The gendered construct of social and economic relations within and outside the household means that women are discriminated against and experience inequality in virtually every aspect of housing, be it access to rental accommodation and credit and loans for homeownership, policy development, control over household resources, prescribed household roles, rights of inheritance or the construction of housing. Therefore, a useful starting point to ensure that the rights found in the ICESCR,[11] such as the right to adequate housing, are meaningful to women is to incorporate, within their content, rights to equality and to non-discrimination based on sex.

5. This starting point was, in fact, contemplated by the framers of the ICESCR and is reflected in its provisions. The ICESCR contains complementary and interrelated articles dealing with women's right to be free from discrimination[12] and the equal right of women to the enjoyment of all rights contained in the ICESCR.[13] The Covenant does not provide a definition of discrimination and equality and the CESCR has yet to adopt a General Comment to this effect. Until it does, these concepts are best understood by reference to the authoritative pronouncements of other international human rights bodies such as the United Nations Human Rights' Committee (the HRC), which monitors compliance with the ICCPR. Drawing on the HRC's *General Comment 18*,[14] it can be stated that discrimination and inequality occur when a distinction, exclusion, restriction or preference based on any enumerated ground in the ICESCR - race, colour, *sex*, language, religion, political or other opinion, national or social origins, property, birth or other status – is made which has the effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of the rights contained in the ICESCR.[15]

6. Discrimination and inequality can occur in different ways. The most obvious form of discrimination that results in inequality is when a law, policy or practice blatantly excludes or restricts a protected group or prefers and distinguishes between people based on an enumerated ground. In the housing field one of the most notorious laws falling into this category of discrimination was the *Group Areas Act* (1950) of Apartheid South Africa. On its face this law segregated communities based on race and relegated the black population to a minor percentage of the nation's land. The language of the *Act* as well as its purpose and effect was discriminatory. But Discrimination is not always this blatant. In particular, discriminatory effects are often obscured by the ostensibly non-discriminatory language of a law, policy or practise. For example, with respect to homeownership in Canada, a federal government housing corporation and the main banks adhere to a "gender neutral" policy whereby the insurance required for a house mortgage (when less than 25% of the cost of the house is provided as a deposit) will only be provided if the buyer will spend less than 32% of their income on debt-servicing. While this may appear to be a neutral policy in the sense that the 32% rule applies to

all people who put down a deposit of less than 25% of the cost of the house, in effect it is not neutral because women are generally poorer than men and thus more likely to require loan insurance and more likely to be spending more than 32% of their income on debt servicing. In this way, a policy that is non-discriminatory in its language can still be regarded as discriminatory because of its effects.

7. In the example of the 32% rule, the discrimination arises not because women are treated differently in the language of the rule but because they are situated differently in the world in which the rule operates. If the different situation of women was not taken into account in defining discrimination and equality then women, not to mention other disadvantaged groups, would only enjoy what has been called formal equality. That is, they would be equal only in the sense that they would be treated in the same way that men are treated. To the extent that women and men are identically situated in the world, being treated equally is, of course, important. However, to the extent that women are situated differently in the world and, in particular, are often disadvantageously situated, a merely formal conceptualization of equality - treating women in the same way that men are treated on the basis that men and women are the same[16] - is insufficient. Rather, "in those circumstances where women and men are not identically situated, which is most of the time"[17] a substantive conceptualization of equality is necessary. Substantive equality recognizes that equality is not a matter of "superficial sameness and difference"[18] rather it is about the "accommodation of differences".[19] It understands that women as a group are disadvantaged, and that equality must address the economic, social, legal and political dimensions of that group disadvantage.[20] Consequently, adopting a substantive conceptualization of equality means not only that inequality exists when gender-neutral laws, policies or practices have differential negative effects on women, but also that inequality exists when the differential disadvantage of women is not addressed by laws, policies or practices. As a result, substantive equality may require positive obligations on behalf of States to address needs related to disadvantage.[21] For example, for women's equality with respect to home ownership to be realized in the face of the 32% rule, outside of eliminating the rule, the government would be required to undertake positive steps. These might include establishing other homeownership programmes for women who cannot meet the 32% rule, or they would be obliged to subsidize women's debt servicing such that she would not be paying more than 32% of her income on her mortgage and insurance.

8. Therefore, for the non-discrimination and equality rights included in the ICESCR to have real-world significance for women, the concepts of discrimination and equality need to be conceptualized substantively, rather than merely formally. If this is done, and if the right to housing is conceptualized to encompass the rights to non-discrimination and to equality, then the right to housing can be defined in a way that underscores its applicability to women. In combination, these conceptualizations provide a framework which requires a focus on women's lived experiences and a consideration of women's economic, social, legal and political position in its application. Using this framework we can better understand, for example, how discriminatory laws, policies, customs and tradition that prevent women from inheriting housing, land and property and deny women access to credit and loans necessary to secure and maintain housing,[22] deprive women of the right to housing.

9. Apart from rendering the right to housing more responsive to the situation of women with respect to housing, adoption of this framework also has the potential to force governments to be more responsive to that situation. This is because, according to international law, the discrimination and equality rights provisions of the ICESCR (articles 2(2) and 3) are not subject to progressive realization but must be implemented immediately.[23] This means, therefore, that States Parties to the ICESCR have obligations under articles 2(2) and 3 to *immediately* respect and protect and fulfill women's right to equality. Because the denial of women's economic, social and cultural rights is inextricably linked with discrimination against women and women's inequality, this provides the CESCR with a legal foothold to have violations of women's economic, social and cultural rights put at the forefront of any review of a State party. It also provides NGOs with a legal foothold to demand of their government's the immediate implementation of women's economic, social and cultural rights.

PART II. IS THERE A WOMAN IN THE HUMAN RIGHT TO ADEQUATE HOUSING ?

10. The principal codification of the international right to adequate housing is contained in article 11(1) of the ICESCR which states:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...

Although the right to housing appears in other treaties,[24] this articulation is particularly important. Not only is the ICESCR one of the three legal instruments contained in the International Bill of Rights, but also the bulk of the work at the international level pertaining to the right to housing has been based on this articulation of the right. For example, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) - responsible for examining the degree to which countries that have ratified the ICESCR have undertaken the implementation of the rights found therein - is the only treaty monitoring body that has devoted significant attention to articulating the content of the right to housing in its General Comments. General Comment 4 is now recognized as the most authoritative legal interpretation of the right to adequate housing at the international level.[25] General Comment 7 focuses on the practice of forced eviction as a gross violation of human rights, particularly housing rights. Of all the treaty monitoring bodies, the CESCR has also shown the most sustained and explicit commitment to the right to housing in its review of State party compliance with the Covenant. This is reflected in a number of the Committee's Concluding Observations which often refer to the status of housing rights.[26]

11. Though due attention has been paid to the right to housing in international law, considerably less attention has been devoted to the meaning of the right to housing for women. Perhaps this is due - at least in part - to the male-specific language of article 11 (1) which in one fell swoop assumes that all women cohabit with men, rendering women's housing rights invisible.[27] In its General Comment 4, the CESCR has attempted to address this:

> The right to adequate housing applies to everyone. While reference to "himself and his family" reflects assumptions as to gender roles and

> economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2.2 of the Covenant, not be subject to any form of discrimination.[28]

This paragraph indicates that the Committee recognizes that a male-specific approach to housing rights is inappropriate and that the right to housing extends to everyone, even women (or at least female-headed households). A commitment to extending the right to housing to everyone without discrimination is essential if women are ever to enjoy the right. The implementation of this commitment will determine the extent to which women are actually able to claim the right to housing. In particular, and as should be evident from the preceding section, it is crucial that this commitment incorporate a substantive conceptualization of equality. Unfortunately, the CESCR has had some difficulty with the full implementation of this commitment in some of its own work and, more specifically, has yet to explicitly express a commitment to substantive equality in its interpretation of the right to housing. A closer examination of the Committee's interpretations of the right to housing in its General Comments reveals the weaknesses in its approach from women's perspectives.

General Comment 4

Overview

12. General Comment 4 attempts to adopt a "gender-neutral" and de-contextualized approach to housing rights. Except for the reference in paragraph 6 to "female headed households", at no time does the Comment actually mention women. The General Comment begins with an articulation of some of the fundamental principles underlying the right. The Committee indicates that the right to housing must be understood in a broad sense to include more than just the right to four walls and a roof, and should be understood as the right to live somewhere in security, peace, and dignity.[29] The Comment also notes that the right to housing is integrally linked to other human rights such as the right to participate in public decision-making and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence.[30] In keeping with the "inherent dignity of the human person", housing rights should be ensured to all persons irrespective of income or access to economic resources.[31]

13. The heart of the Comment is the discussion of the constituent elements of "adequate" housing: (a) legal security of tenure; (b) availability of services, materials, facilities, and infrastructure; (c) affordable; (d) habitable; (e) accessibility; (f) location; and (g) culturally adequate.[32] The Comment then suggests several ways in which governments might meet their obligations to achieve the full realization of the right to adequate housing. For example, governments should adopt a national housing strategy,[33] and should engage in effective monitoring to ascertain the full extent of homelessness and inadequate housing and to provide

detailed information about the most vulnerable and disadvantaged with respect to housing, in particular, "homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low income groups".[34]

14. The Comment draws to a close by identifying component elements of the right to adequate housing which are consistent with the provision of domestic legal remedies, highlighting in particular legal actions related to forced evictions, discrimination in housing, inadequate housing conditions and increased levels of homelessness.[35] On the topic of forced evictions, the Committee states that "instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law".[36]

Analysis

15. One of the most striking features of General Comment 4 is that despite its stated commitment to non-discrimination and the extension of the right to housing to everyone including women, the Comment fails to reflect and incorporate this commitment in the articulation of other aspects of the content of the right. This is not to say that the articulated principles in the General Comment discriminate against women or explicitly exclude women.[37] Rather, perhaps as a result of its efforts to be universally applicable - and hence gender neutral and de-contextual - the Comment appears to ignore women. The exclusion of any direct references to women in the General Comment is particularly surprising when considered in light of what the Comment does say. For example, at paragraph 13, given the overwhelming number of obstacles that prevent women as a group and class from accessing housing as well as from adequate housing,[38] and which violate women's housing rights, it is startling that the framers fail to include women as an overarching group as well as the most disadvantaged group in the list of disadvantaged groups in the area of housing. Similarly, though the Comment explicitly refers to legal complaints against racial discrimination in housing it fails to explicitly mention sex discrimination in the same context.[39] While the Comment rightly proposes that the right to housing is inextricably linked with other human rights, it fails to link housing rights with rights that might be regarded as particularly relevant to women, such as those contained in CEDAW for example. It also fails to provide any analysis of the complexities of this proposition for women. For example, the Committee asserts that privacy rights are a very important dimension in defining the right to housing, and yet for women the privacy and sanctity of the home under human rights law can be used to obscure the violence that women so often suffer therein.

16. Even in the more detailed and specific aspects of the General Comment, for example in the paragraphs dealing with the seven elements required of "adequate" housing, women fail to make an appearance.[40] For example, in its discussion of housing *affordability,*[41] the Comment suggests that States parties should establish housing subsidies for those unable to obtain affordable housing, without ever mentioning that these subsidies will be particularly relevant for women who constitute the poorest in society and that these subsidies must be allocated in a manner that does not discriminate against women (as so often subsidy allocations do because they are provided to the head of household who is presumed to be male) and that gives priority to particular groups of women in acute need. In its discussion of the *habitability*[42] of housing, the Comment refers to the necessity that housing protect people from the elements and that it protect

the physical safety of inhabitants. It fails, however, to consider the mental health of inhabitants and related dangers that might threaten the physical safety of occupants, such as domestic violence. The Comment does not fare better in its definition of *accessibility*. Women are excluded from the list of disadvantaged groups requiring special housing needs, in particular resources for adequate housing.[43] Moreover, the very particular barriers to accommodation experienced by women, due among other things to women's poverty, discrimination against women in laws, policies, customs and traditions, are not addressed at all.

17. Of course, it could be argued that the broad principles of General Comment 4, in its present form, can be interpreted so as to include women's experiences. Indeed, some support for this argument exists in the Committee's emerging willingness to examine women's housing conditions in its review of State party compliance with the Covenant. In fact, they have already taken some steps in this direction. A review of the Committee's Concluding Observations over the last 5 years reveals that the Committee has periodically criticized State parties under articles 2 and 3 for discrimination against women in the housing sphere.[44] Beyond this, on at least one occasion, the Committee has demonstrated a willingness to examine a State party's compliance with the right to adequate housing from women's perspectives. In its review of Canada in November 1998, the Committee considered women's particular housing and living conditions in its assessment of Canada's compliance with article 11(1) of the ICESCR. In their Concluding Observations the Committee states:[45]

> 28. The Committee is concerned that the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other …

18. Though this type of analysis does not commonly appear in the Committee's Concluding Observations - in this case it was the result of Canadian non-governmental organizations' lobbying efforts - the Committee demonstrates that it is open to an interpretation of the right to adequate housing that incorporates women's substantive experiences of inequality in the housing sphere. This openness suggests that women can look to the ICESCR, and particularly article 11(1), for protection and promotion of substantive equality with respect to housing. In turn, it supports the argument that the shortcomings with respect to women's experiences in the text of the General Comment do not preclude attention to those experiences in applying that text.

19. While this may be true, as previous experiences in the human rights realm and elsewhere indicate, unless women's experiences are named and unless principles and rights are articulated in a way that address women's specific experiences, women will remain invisible, their human rights illusory. In other words, laws and legal interpretations such as this General Comment must be specific and explicit with respect to women's experiences and needs if claiming the right to housing is to be an effective recourse for women.

20. For the right to housing to take on real relevance for women, however, it may be necessary to move beyond the confines of General Comment 4 to a re-formulation of the

fundamental principles informing housing rights where women are at its centre. Given the importance of housing in women's lives, the distinctive relationship between women and housing,[46] and the fact that for many women worldwide housing is the only sphere in which they interact, placing women at the centre of an understanding of housing rights makes good sense. The effect of doing so forces a shift in the basic principles underlying the right to housing. This is not to say that those principles articulated in the General Comment 4 would be rendered irrelevant, but rather they would have to be further contextualized by women's lives. At the same time, new principles would emerge. The division of labour and its bearing on women's relationship to housing would have to be acknowledged. Women's experiences of violence in the home would undoubtedly inform the general principles as well as the "adequacy" requirements of the Comment. The many barriers to accessing and maintaining accommodation faced by women would be challenged. The relationship between women's poverty and women's housing would be acknowledged and a housing rights principle would be developed to address it.

21. As it stands, there is only a remote chance that in the near future the Committee on Economic, Social and Cultural Rights will re-write General Comment 4 to better reflect women's experiences and needs, especially since they have yet to adopt a General Comment on Women and the ICESCR. And so, in the immediate future we can encourage the CESCR to infuse their current understanding of the right to adequate housing with an understanding of substantive equality and thus women's actual experiences. To assist in imagining how the General Comment could be read if it were to be more relevant to women, the table in Appendix A reformulates elements of adequacy using women's experiences.[47]

Forced Eviction: General Comment 7

Overview

22. The right to be free from forced eviction has emerged as one of the central tenets of the right to housing. Since the early 1990s the CESCR has devoted a substantial amount of time and energy on this issue. General Comment 4 refers extensively to the issue of forced evictions, identifying security of tenure as the cornerstone of the right to adequate housing and declaring that forced evictions are prima facie incompatible with housing rights. On a number of occasions the CESCR has also issued letters of concern urging State parties to re-consider carrying out planned forced evictions[48] and the CESCR has consistently investigated allegations of pending or past forced evictions in its reviews of State parties.[49] In fact, on two occasions, the CESCR visited countries where forced eviction was identified as an acute problem, in an effort to encourage the State parties in question to comply with the ICESCR.[50] In keeping with this commitment to curtailing the practice of forced evictions, in June 1997, the CESCR adopted General Comment 7 on forced evictions.[51]

23. In international law, the practice of forced eviction has been defined to refer most commonly to instances where masses of people are involuntarily removed from their homes or lands as a result of: development projects, city beautification projects, occupation, and armed conflicts, internal strife or war. For example, in the slums of Bangkok, Thailand, an average of 5 demolitions occur each month, as a means of "cleaning" the streets. In a number of countries such as Turkey, Burma and Palestine, homes of minority populations are regularly demolished by occupying powers as a means of controlling land and power. And across parts of Africa and

south Asia, large-scale hydro-electrical and other dam projects continue to result in the forcible eviction of hundreds of thousands of dwellers, commonly indigenous peoples. With these types of evictions in mind, the CESCR's General Comment 7 defines forced evictions as follows:

> [T]he permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.[52]

As in the case of General Comment 4 on housing rights, General Comment 7 notes that forced evictions frequently violate other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy and family and home and the right to the peaceful enjoyment of possessions.[53]

24. Much of the work on forced evictions at the international level has focused on a determination of the procedures and measures that should be required by human rights law at all stages of the forced eviction process, an issue discussed in General Comment 7. As a starting point, the CESCR asserts that the State must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.[54] To this end, States must ensure they have enacted legislation against forced evictions. This legislation should include measures providing the greatest legal security of tenure to occupiers of houses and land and should restrict and control the circumstances under which evictions may be carried out.[55]

25. General Comment 7 also outlines a number of requirements that States must meet prior to an eviction, such as exploring all feasible alternatives in consultation with those potentially affected (especially in the case of large scale evictions).[56] In the event that forced eviction is deemed absolutely necessary, the CESCR calls on State parties to ensure appropriate procedural protection and due process for those affected. The CESCR also stipulates that forced eviction should never result in rendering people homeless or vulnerable to violations of other human rights. Where those affected cannot provide for themselves, State parties must take all appropriate measures to ensure that adequate alternative housing or resettlement is available.[57] And then, to ensure that State parties are meeting their obligations regarding forced evictions under the ICESCR, the CESCR asks State parties when reporting to the Committee to provide them with information pertaining directly to the practice of forced evictions, such as the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction and any legislation relating to forced evictions.[58]

Analysis

26. In documents pertaining to forced eviction, it is not uncommon to read that women are the most affected by this practice. For example, General Comment 7 states, "[w]omen, children,

youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction ...".[59] Despite this admission, the right to be protected against forced eviction has evolved at the international level with little attention to women's experiences and roles in resisting and coping with this practice.

27. Insight into this exclusion was first gleaned in exploratory discussions with colleagues about the idea that domestic violence could be understood as a form of forced eviction. This idea was repeatedly met with hostility. Some argued that the coercion to leave the home experienced by women in situations domestic violence is not sufficient to constitute *forced* eviction, and others relied on traditional (and outdated) legal arguments that international human rights law cannot reach into the private realm of the home.

28. The male-centric view of the right to be free from forced evictions has meant that causes of eviction that are unique to women - domestic violence, discriminatory ownership and inheritance laws, customs and traditions, and cutbacks to social assistance entitlements all of which can result in women involuntarily leaving their homes - have yet to be explicitly identified as falling within the ambit of forced eviction under international human rights law. General Comment 7 takes a step in this direction. At paragraph 10 it states:

> ... Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered h[illegible]eless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

This reference to ownership laws, customs and traditions pertaining to inheritance, however, is mentioned almost in passing and coupled with a comment on the violence women are exposed to in the post eviction context, failing to mention the violence within the home that forces the eviction of so many women.[60]

29. The recognition that women suffer disproportionately from the practice of forced eviction is not translated or reflected in any other part of the General Comment. For example, in its discussion of those instances where eviction is considered to be justified, the Committee draws on Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and its General Comment 16 which states that interference with a person's home can only take place "in cases envisaged by the law".[61] The protection of the home from outside forces or agents is a complicated issue from women's perspectives. On the one hand, such protection is important to women, especially during situations of armed conflict. At the same time, as discussed previously, the protection of the home or its insulation from public view, can create conditions that allow household violence to flourish. Moreover, in many instances those who might in other circumstances "protect" the home are the very persons who pose a threat to women's physical security and bodily integrity, particularly during armed conflict.

30. Of course, these critiques of the development of the law on forced eviction are limited because they merely insert women into an existing framework. What happens to our understanding of forced eviction if we move away from women's particularity and place women at the very centre of a discussion on forced eviction? In a list-serve discussion on women and forced eviction one subscriber suggested that if we focus on what is distinct or particular to women, there is a presupposition that

> forced eviction is an attack on "the community", and usually a fight between men, with the home and often the woman herself seen as male property to be destroyed. In this scenario, the woman is at best an adjunct to men or else something that just happens to be in the way in a struggle between men and their categories of importance eg. Wealth, status, ethnicity, religion. In this view, forced eviction is just one more area of struggle and violation that affects "all people" (for which we can read "the community with a male political face"), and gender is relegated to something "particular", a subset of experience within a greater and somehow "neutral" whole.[62]

31. Of course, one might ask, why should the group "women" be at the centre of an analysis or discussion of the practice of forced eviction, rather than all those affected including children, older persons and men? The answer lies in an understanding of the practice itself. To begin, forced eviction does not happen on a whim; it is a strategic practice, one that likely has women as its aim and as a focus. As is obvious, forced eviction most often targets the home which, as discussed earlier, for many women is the primary site of their existence. Is it by mere chance that a violent practice aimed squarely at the home has emerged as a weapon in war and development or has the fact that the home is such a vulnerable site - because it is women's site - informed the evolution of this practice? Similarly, what can be made of the fact that in many regions forced evictions are carried out in the middle of the day when most men are at work and women are alone at home with their children?[63] The subscriber to the Eviction Women list serve provides an eloquent synthesis of these thoughts:

> ... what happens when you stop looking at forced eviction as an outrage or merely happenstance and instead consider that in forced eviction everything is going perfectly right, as planned and desired by someone. From this perspective, gender becomes entirely central, and even generative. That is, gender actually produces an impetus for forced eviction.
>
> As I read [the] piece about Burma, my mind kept coming back to the image of the woman cowering in her home, waiting alone or with her children for "her turn". Why, I asked myself, are the men not there too; where are they able to go that the women are not? And why, I asked myself, are the women unarmed?

Yes, I am taking the radical step of suggesting that women are the focus of forced eviction, and that traditional gender organization makes forced eviction more likely as a strategy of aggression. Gender organization, in other words, shapes and determines the manifestations of power. It is difficult for us to see this because imbalanced gender relations are so universal and long-standing that we overlook how productive and active they continue to be: instead, we see women as the (mere) victims of the aggression.

If the enemy conceives of you as the man's property, and, if a single woman, then as of no importance, this does not mean his fight is with the man only. Instead, what it means is that he is aware of, understands, and reinforces your gender status. His strategy is entirely cognizant of your gender status and/or the way in which your violation will humiliate your male "owner". This fact does not make you peripheral; rather, it makes you, to repeat, absolutely central.

The same analysis applies if the violation is to the physical structure of the home; by depriving the man of the physical structure for the institutionalization of his marriage and thereby his relation to you, you are not peripheral or particular to this drama, but central.

Similarly, if you are a woman bringing up your children on your own, your status as such draws the enemy to you and encourages the phenomenon of forced eviction.

Some may argue that this emphasis on women seems paranoid and self-important. However, it is only paranoid and self-important if you accept the idea of women's "particularity" and therefore relative unimportance. I am suggesting that women only function as particularity, as a subset, but that that function is, however, crucial to the social dis/order and to all manifestations of power.

I am attempting in this analysis to reinforce gender as a primary structure underlying oppression and social phenomena and determining their shape and form. It is disturbing to me that we have to find what is "particular" and "distinct" to women in a strategy so rooted in familial and gender organization.

Conclusion

32. This excerpt is an appropriate place to close as it is raises both provocative and essential issues that must be considered in any effort to engender human rights. It suggests that in order for the right to housing and other economic, social and cultural rights to be meaningful to women, in the long run, we cannot simply return to existing international jurisprudence and insert women or women's experiences because the very premises upon which most of these documents are based ignore the broader social organization and order, and women's position

within that organization/order. And so, ours is an uphill struggle: to re-conceive housing rights and other economic, social and cultural rights in a way that both recognizes and challenges dominant social orders and gender roles. This task is that much more difficult in light of the fact that this work needs to be done in the here and now, when the social order and gender roles we aim to challenge remain in tact, all around us, everywhere. Using substantive equality to understand the right to housing as it pertains to women, would go some distance in ensuring that women's structural and systemic disadvantage with respect to housing is both recognized and addressed.

Notes

[1] As found in: *Human Rights: A Compilation of International Instruments*, Vol. I, First Part, (New York and Geneva: United Nations, 1994) at 8. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, Entry Into Force: 3 January 1976, in accordance with article 27.

[2] See: David Hulchanski and Scott Leckie, *Chronology of Housing Rights* (Netherlands: Centre On Housing Rights and Evictions, 2000).

[3] The CESCR is responsible for monitoring State Party compliance with the ICESCR. The Committee also adopts legal interpretations of the provisions of the ICESCR in the form of "General Comments".

[4] For example, Resolution 1995/27, "*Promoting the realization of the human right to adequate housing*" (August, 1995), Resolution 1994/8, "*Children and the right to adequate housing*" (August, 1994), Resolution 1993/36, "*The Right to Adequate Housing*" (August 1993), Resolution 1992/26, "*Promoting the Realization of the Right to Adequate Housing*" (August 1992).

[5] Resolution 1988/24, "*The Realization of the Right to Adequate Housing*" (March 1988).

[6] Resolution 16/7, "*The realization of the human right to adequate housing" (May 1997), Resolution 14/6, "The Human Right to Adequate Housing*" (May 1993); Resolution 1988/24, "*The Realization of the Right to Adequate Housing*" (March 1988).

[7] The first Special Rapporteur on housing rights was appointed in 1992 by the Sub-Commission and the Promotion and Protection of Human Rights (Resolution 1992/26) and endorsed by the Commission on Human Rights in 1993 (Resolution 1993/103). His mandate extended until 1995. The Commission on Human Rights recently appointed a Special Rapporteur on Housing Rights as well, see: Resolution 2000/9, "*Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*".

[8] For a list of publications on the right to adequate housing see: Centre on Housing Rights and Evictions, *Sources 2: Bibliography on Housing Rights and Forced Evictions,* 2d ed. (Netherlands: Centre on Housing Rights and Evictions, 2001).

[9] The number of women on the Committee now stands at two, representing 11% of the only international body charged with monitoring State implementation of economic, social and cultural rights. In its Concluding Observations on State Parties' compliance with the ICESCR, the Committee has attempted to address women's experiences, but this appears to occur in more of an ad hoc rather than systematic fashion. See: Marsha Freeman, *Equality and Rights: The International Covenant on Economic, Social and Cultural Rights, Article 3, Background Paper for the Proposed General Comment on ICESCR Article 3* (unpublished, on file with author, 2001).

[10] The CESCR meets twice or three times annually (April, November and sometimes in August) to review State Party compliance with the ICESCR, to adopt General Comments and to discuss particular issues of relevance to the Committee.

[11] The ICESCR codifies the rights to: work and associated trade union rights, social security, family protection, adequate standard of living, housing, food, health, education and culture.

[12] Article 2(2) states:

> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[13] Article 3 states:

> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

The interrelatedness of Articles 2(2) and 3 of the Covenant is derived from the fact that to discriminate is to treat people unequally. That these concepts are two-sides of the same coin is reflected in national constitutions and jurisprudence. For example, under the heading "Equality Rights", the *Canadian Charter of Rights and Freedoms* states at section 15 (1):

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[14] Human Rights Committee, *General Comment 18* (1989), *Non-Discrimination*, HRI/GEN/1/Rev.3 (1997) at par. 29.

[15] *Ibid.* at par. 6-7.

[16] Formal equality is understood to work in situations where women want to be treated "the same" as men, such as with respect to the right to hold title to land and property, or the right to vote.

[17] Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*, (Ottawa: Status of Women Canada, 1998) at 43.

[18] Gwen Brodsky and Shelagh Day, "Women's Economic Inequality and the Canadian Human Rights Act" in *Women and the Canadian Human Rights Act: A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, 1999) 113 at 135.

[19] *Andrews* v. *Law Society of British Columbia*, [1989]1 S.C.R. 143 as cited in Martha Jackman and Bruce Porter, "Women's Substantive Equality and the Protection of Social and Economic Rights Under the Canadian Human Rights Act" in *Women and the Canadian Human Rights Act, supra* note 18, 43 at 56.

[20] Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit*, *supra* note 17 at 45.

[21] Martha Jackman and Bruce Porter, *supra* note 19 at 56.

[22] This may be because women, unlike men, are considered minors and require a male relative's consent for loan approval or it may because women's income is too low for a lending agent to be willing to guarantee the loan.

[23] *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 22-26 January, 1997 at 1 as at: <www.laaw.uu.nl/english/sim/instr/maastricht.asp>

[24] The right to housing is also codified in: The International Convention on the Rights of the Child (art. 27 (3)); The International Convention on the Elimination of All Forms of Discrimination Against Women (art. 14 (2) (h)); and The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e) (iii)).

[25] Committee on Economic, Social and Cultural Rights, *General Comment 4,* U.N. Doc. E/C.12/1991/4 (1991).

[26] Committee on Economic, Social and Cultural Rights, *Gen Comment 7*, U.N. Doc. E/C.12/1997/4 (1997). See, for example, excerpts of the Committee on Economic, Social and Cultural Rights' Concluding Observations on: Canada (1993 & 1998), Panama (1991), Philippines (1995), Nigeria (1998), and Dominican Republic (1994, 1996 & 1997) in Centre on Housing Rights and Evictions, *Sources 3: Forced Evictions and Human Rights, A Manual for Action* (Netherlands: Centre on Housing Rights and Evictions, 2d ed., 1999) at 16.

[27] Pamela Sayne, "Ideology as Law: Is There Room for Difference in the Right to Housing?" in Hemalata Dandekar ed., *Shelter Women and Development First and Third World Perspectives* (1992) 97, 99-100. See also, Pamela Sayne, *Housing Language, Housing Reality?* 11(2) Canadian Women Studies (1990).

[28] General Comment 4, *supra* note 25 at par. 6.

[29] *Ibid.*, at par. 7

[30] *Ibid.*, at pars. 7 and 9.

[31] *Ibid.*, at par. 7.

[32] *Ibid.*, at par. 8.

[33] *Ibid.*, at par. 12. According to this paragraph, a national housing strategy should define the objectives for the development of shelter conditions, identify the resources available to meet these goals and the most cost effective way of using them and set out the responsibilities and time frame for the implementation of necessary measures. Such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.

[34] *Ibid.*, at par. 13.

[35] *Ibid.*, at par. 17.

[36] *Ibid.*, at par. 18.

[37] In fact, after an analysis of women's housing experiences and needs it might be agreed that at least some of the principles articulated in General Comment 4 are essential to women's housing rights.

[38] For an overview of some of these barriers see: Leilani Farha, "Women and Housing" in Kelly Askin and D. Koenig, eds., *Women and International Human Rights Law, Vol.1,* (New York: Transnational Publishers, 1999) 483.

[39] See for example, General Comment 4, *supra* note 25 at par. 17(c).

[40] See Appenidx for a chart listing the seven requirements of "adequate housing", the definition as it appears in the General Comment 4 and the elements omitted from women's perspectives.

[41] General Comment 4, *supra* note 25 at par. 8 (c) states:

> Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties

> should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability tenants should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.

[42] *Ibid.*, at par. 8 (d).

[43] *Ibid.* at par 8 (e) which states:

> Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.

[44] See for example the Committee's Concluding Observations on Cameroon, U.N. Doc. E/C.12/1/Add.40 (1999).

[45] UN Doc. E/C.12/1/Add.31 (1998).

[46] Jane Darke, "Women and the Meaning of Home" in Rose Gilroy and Roberta Woods eds., *Housing Women* (London: Routledge, 1994) 11 at 11.

[47] For a reformulation of all of the elements of adequacy see Appendix.

[48] For example, such letters have been issued to: Israel, Nigeria, Dominican Republic, and Philippines.

[49] For example, Korea, Philippines, Dominican Republic, Panama, and Israel.

[50] The Committee has visited, for example, Panama and the Dominican Republic.

[51] Committee on Economic, Social and Cultural Rights, *General Comment 7, supra* note 26.

[52] *Ibid.*, at par. 4. Other definitions of forced eviction in international legal documents are not limited by the phrase "without the provision of, and access to, appropriate forms of legal or other protection". See for example, UN Fact Sheet No. 25 on Forced Evictions which states: "The practice of forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State" available on: <www.unhchr.ch/html/menu6/2/fs25.htm>. Also, the definition in the *Comprehensive Human Rights Guidelines on Development-Based Displacement*, UN Doc. E/CN.4/Sub.2/1997/7, provides the following definition:

> [A]cts and/or omissions involving the coerced and involuntary removal of individuals , groups and communities from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place.

[53] Gen Comment 7, *supra* note 26 at par. 5.

[54] *Ibid.*, at par. 9.

[55] *Ibid.*, at par. 10.

[56] *Ibid.*, at par. 14.

[57] *Ibid.*, at par. 18.

[58] *Ibid.*, at par. 21, drawing on UN Doc. E.C.12/1990/8, Annex IV, Committee on Economic, Social and Cultural Rights Revised Reporting Guidelines for State Parties.

[59] General Comment 7, *supra* note 26 at par. 10. It is questionable whether it is appropriate to list women alongside children, youth, older persons because, as discussed below, there is reason to believe that women suffer more than any other group and bear disproportionate responsibility for the effects of forced eviction on family matters.

[60] This General Comment was being negotiated when I first started working on women's housing rights at the international level, in 1997. I did speak with several members of the CESCR about including a reference to domestic violence somewhere in the Comment and even provided suggested text. This suggestion was not taken-up.

[61] As cited in General Comment 7, *supra* note 26 at par. 16.

[62] Darya Farha, *Eviction Women List-Serve* correspondence (27 October 2000, on file with author). The Eviction Women list serve was hosted for 8 weeks in 2000. It was co-sponsored by the Women's Housing Rights Programme at the Centre on Housing Rights and Evictions and the University of Toronto, Faculty of Law, Women's Human Rights Resources.

[63] SERAC, "Women and Forced Eviction in Nigeria" (forthcoming, 2001, on file with author).

APPENDIX A: RE/CONCEIVING "ADEQUACY" ELEMENTS

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Security of Tenure	All persons should possess a degree of security of tenure which guarantees legal Protection against forced eviction, harrassment and other threats. State parties should confer legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups	*women lack security of tenure more than other groups *household/domestic violence perpetrated primarily vs. women causes insecure tenure *the causes of forced eviction should include household/domestic violence, removal from the home because of discriminatory inheritance laws, customs, traditions
Availability of services materials, facilities and infrastructure	An adequate house must contain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services.	*the availability of these are particularly important to women given that women spend more time in the home than do men *for women it's not just sustainable access that's important, it's proximate access *in order for the availability of these to be ensured, women must be permitted to play a key role in community planning, development and housing *the availability of these are dependent on women's rights in and access to land, property and housing

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Affordable	Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened. Steps should be taken by States parties to ensure the % of housing-related costs is commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing. Tenants should be protected from unreasonable rent levels or rent increases.	*as the poorest group in society arrears and evictions are of particular concern to women *to determine household income levels must look at the income actually available to the woman in the house. Cannot presume that male "head of household" income is reaching all members of the household *housing subsidies must be allocated in a manner that does not discriminate against women and that gives priority to particular groups of women *male landlords often exploit women by demanding sexual "favours" to avoid rent increases and eviction
Habitable	Adequate housing must provide the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to apply the Health Principles of Housing which view housing as the environmental factor most associated with disease conditions. Inadequate housing and living conditions are invariably associated with higher mortality and morbidity rates.	*health should go beyond physical health & include mental health - and women should be afforded a guarantee of physical and mental safety in the house (domestic violence being the key concern here) *women need to be involved in training and education around disease control - not just male heads of households, but men need to be trained to contribute *women are susceptible to HIV/AIDS because of male partner's relationship with other other women. Men need to take responsibility for their role in the spread of AIDS

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Accessibility	Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.	*women as the largest, most disadvantaged group omitted *women who have suffered household or domestic violence omitted *women as the most landless group across the world. The link between landlessness and discriminatory inheritance rights and social pressures which keep women from claiming their rights to inheritance

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Location	Adequate housing must be in a location which allows access to employment options, health care services, schools, child-care centres and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households. Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.	*employment options for women often means arable land *women require proximate access esp. to health care facilities *near schools
Culturally Adequate	The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.	*women are almost always excluded from housing design, the construction of housing *cultural identity is often male defined

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of General Discussion on article 3 of the Covenant: equal right of men and women to the enjoyment of economic, social and cultural rights set forth in the ICESCR

Monday, 13 May 2002

EQUAL ENJOYMENT OF THE RIGHT TO HEALTH

Background Paper submitted by The Center for Reproductive Law and Policy (USA)* **

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* The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

** Issued as submitted.

GE.02-40622 (E) 120302

A General Comment on Article 3 of the ICESCR should include statements concerning:

Equality and non-discrimination in the context of the right to health:

1. In the Committee's General Comment 14 on the Right to Health[1] it defined the right to equality and non-discrimination in health as proscribing all discrimination in access to health care, as well as the underlying determinants of health, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.[2]

2. The Committee has interpreted the right to health to be an inclusive right which includes timely and appropriate health care as well as a right to the underlying determinants of health which include the interrelated elements of: **availability, accessibility, acceptability** and **quality** of health care.[3] The General Comment on equality should reaffirm States parties' obligations with respect to ensuring women's right to equality in each of these components of the right to health.

3. Equality in **availability** requires that goods, services and information that are needed by women, especially reproductive health services, be equally available in sufficient quantity as those required by men.[4] States parties must not impose barriers on availability of goods, services and information that women need in order to enjoy their right to health, such as safe abortion services, family planning services and information, etc.

4. Equality in **accessibility** requires that access to health facilities, goods and services be available to all in law and in fact, particularly to vulnerable or marginalized sections of the population. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.[5] These barriers include: lack of availability, legal restrictions, excessive regulation, third-party consent requirements, cost, lack of adequate insurance coverage and violence or coercion in the health-care context.

5. Equality in **acceptability** requires that health-care providers, facilities, goods and services be respectful and appropriately sensitive to women's health needs.

6. Equality in **quality** of health facilities, goods and services mandates that medical personnel, medications, and equipment needed to meet women's health needs be of a quality commensurate with those available to male health-care users.

States parties obligations with respect to equality and the right to health

7. The duty of States parties to ensure, on a basis of equality of men and women, access to health-care services, information and education implies an obligation to **respect, protect** and **fulfil** women's rights to health care.[6] States parties are responsible for taking measures to eliminate discrimination and other factors, which impede women's equal enjoyment of the right to the highest attainable standard of health.

8. The obligation to **respect** women's right to equality in the exercise of their right to health obligates States parties to refrain from discriminating against women in the field of health. States parties must prohibit discrimination on the ground of sex and put an end to discriminatory actions in the field of health. For example, States parties should not criminalize medical procedures needed only by women nor should they punish women who undergo those procedures.[7]

9. The obligation to **protect** women's right to equality in the exercise of their right to health requires States parties to take action to prevent and impose sanctions for violations of rights by private persons and organizations. The right to equality before the law and freedom from discrimination requires States to act against discrimination by public as well as private actors in all fields, including health. For example in the area of violence against women, States parties should enact and enforce laws and policies to address violence against women and sexual abuse of girls and ensure the provision of appropriate health services.[8]

10. The obligation to **fulfil** women's right to equality in the exercise of their right to health requires States parties to take all positive measures including legislative, judicial, administrative, budgetary, economic, and other measures to the maximum extent of their available resources, so as to enable women to enjoy their right to health on equal footing with men. In addition, States parties must make efforts to eliminate stereotypes and customary norms that contribute to the continuation of discriminatory practices that impact women's ability to enjoy their right to health. States parties' obligation to fulfil women's right to equality in the exercise of their right to health mandates that they take positive measures to organize governmental processes and all structures through which public power is exercised to promote and protect women's health.[9]

11. **Gender perspective**: States parties should integrate a gender perspective in their health related policies, planning, programmes and research.[10] States parties should report on their understanding of how policies and measures address the health rights of women from the perspective of women's needs and interests and how they address distinctive features and factors that differ for women in comparison to men.[11]

12. **Disaggregation of data**: The disaggregation of health and socio-economic data according to sex is essential for identifying inequalities in health.[12] States parties should provide disaggregated data by sex on incidence and severity of diseases and conditions hazardous to women's health and nutrition, especially those that affect women or certain groups of women differently from men.[13]

Application of the principles of equality and non-discrimination to specific health issues affecting women and girls:

13. **Population and health policies**: In regulating population, reproductive health, and family planning, Governments must ensure that laws and policies impacting women's right to health incorporate the principles of free and informed consent and choice, non-coercion, confidentially, privacy, non-discrimination and quality of care. All health related policies should incorporate a gender dimension. Underscoring this principle, this Committee has expressed its concern over the effects of governmental polices that decrease or limit access to health-care services such as inadequate budgetary allotments on women's health.[14]

14. **Contraception and family planning**: States parties should ensure access to the full range of contraceptive methods and information. They must eliminate restrictions on contraception, including excessive regulation, third-party consent requirements, and prohibitions on the dissemination of information regarding contraceptives. In particular, States parties should remove all legal and regulatory barriers to reproductive health care for adolescents and create comprehensive, age-appropriate health programmes for them, which include information and services addressing reproductive health, STIs, gender roles, sexuality, and responsible use of contraceptives. In its concluding observations to States parties, this Committee has frequently framed lack of access to family planning services as a violation of the right to health[15] and has also made the connection between lack of access to contraceptive services and high rates of abortion.[16]

15. **Maternal mortality**: In fulfilling women's right to equality in the context of health, States parties should provide universal access to maternal health care, including prenatal and post-natal care for all women, especially adolescents, regardless of their marital status. States parties are under an affirmative obligation to ensure that policies achieve reductions in maternal mortality through increasing access to services, reducing cost, and focusing resources on rural areas and particularly vulnerable populations. This Committee has frequently expressed its concern over high rates of maternal mortality[17] and has asked States parties to take measures to address it.[18]

16. **Abortion**: States parties should enact laws that permit abortion without restriction as to reason or on broad grounds and ensure access to high-quality abortion services for all women regardless of age, income, marital status, or level of education. They should also eliminate third-party consent requirements for a woman to undergo an abortion. This Committee has recognized that the criminalization of abortion or very restrictive abortion laws have a severe impact on women's health[19] and has recommended increased family planning programmes as a way of decreasing the prevalence of abortion.[20]

17. **HIV/AIDS and other STIs**: States parties are under an obligation to fulfil women's rights to equality in the context of health by promoting medical research, health education, and information campaigns on women's increased susceptibility to HIV/AIDS and other STIs. States parties should strengthen gender-sensitive policies and programmes on HIV/AIDS and other STIs and address the factors contributing to women's increased vulnerability to HIV/AIDS such as women's subordination in economic, social, civil and political spheres. States must ensure that sexual and reproductive health programmes, including family planning facilities, diagnose and treat HIV/AIDS and other STIs and promote and supply high-quality condoms and treatment for HIV/AIDS and other STIs. States parties must meet the needs of women living with HIV/AIDS and legally prohibit all forms of discrimination against them, including discrimination in access to health care. In its concluding observations, this Committee has begun to incorporate a gender dimension into its recommendations on HIV/AIDS by recognizing that women are often the first victims of the HIV/AIDS pandemic.[21]

18. **Harmful traditional practices**: States parties should ensure that national legal instruments contain protections of the rights of women and girls specifically recognizing their right to be free from harmful traditional practices such as female circumcision/female genital mutilation (FC/FGM) that undermine their right to health. These protections could include:

constitutional provisions, criminal sanctions, and civil protections and remedies that uphold women's human rights. These measures should be accompanied by appropriate and effective outreach aimed at eliminating demand for the practice In its concluding observations to States parties, this Committee has acknowledged the health-related dangers of FC/FGM[22] as well as the discriminatory aspects of the practice.[23]

19. **Violence against women**: States parties should review and amend legislation that condones violence against women such as exclusions found in penal codes for marital rape and "honour killings" and laws that excuse defendants from rape charges if they marry their victims. States parties are under a positive obligation to take measures to protect women and girls from gender-based expressions of violence on the part of third parties. To this end, States parties should punish perpetrators and sensitize the community, including health-care providers and law enforcement officials, regarding the need to protect women and girls against all forms of sexual violence, including rape, incest and trafficking. This Committee, in its concluding observations, has made numerous recommendations to States parties on domestic violence[24] and has also condemned sexual violence against women,[25] recognizing the link between economic disempowerment of women and their vulnerability to violence.[26]

Broader principles that should apply to equality and non-discrimination in the exercise of all rights enshrined in the Covenant:

20. Customary and religious laws that conflict with guarantees of equality and non-discrimination should be denied legal force. For example, in the context of right to health, formal legal provisions should have supremacy over customary and religious laws that permit or require women and girls to undergo harmful traditional practices.

21. States are under an obligation to respect, protect and fulfil the rights of particularly vulnerable groups of women such as: rural women, poor women, women who belong to racial minorities, women refugees and displaced women, elderly women, female sex workers, and female adolescents. The Committee should recognize that women who belong to these groups might experience certain forms of discrimination differently or disproportionately.

22. The General Comment should acknowledge the indivisibility and interdependence of all rights and should emphasize that guarantees of equality and non-discrimination apply to all rights enshrined in the Covenant. This is particularly relevant with respect to the right to health. Women's ability to enjoy their right to health free from discrimination impacts their ability to exercise all other rights enshrined in the Covenant.

Notes

[1] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4.

[2] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 18.

[3] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 12.

[4] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 12 (a).

[5] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 21.

[6] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, para.13.

[7] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, para. 14.

[8] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, para. 15 (a).

[9] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, para. 17.

[10] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 20.

[11] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, para. 12.

[12] CESCR, *General Comment 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, Doc. No. E/C.12/2000/4, para. 20.

[13] CEDAW, *General Recommendation 24: Women and health*, UN GAOR, 1999, Doc. No. A/54/38/Rev.1, paras. 9,10.

[14] For example, **Armenia**, 08/12/99, E/C.12/1/Add.39, para. 14.

[15] Examples include: **Armenia**, 08/12/99, E/C.12/1/Add.39, para. 15; **Poland**, 16/06/98, E/C.12/1/Add.26, para. 12; **Saint Vincent and the Grenadines**, 02/12/97, E/C.12/1/Add.21, para. 12; **Cameroon**, 08/12/99, E/C.12/1/Add.40, para. 25; **Dominican Republic**, 12/12/97, E/C.12/1/Add.16, para. 15; **Dominican Republic**, 06/12/96, E/C.12/1/Add.6, para. 22; **Paraguay**, 28/05/96, E/C.12/1/Add.1, para. 16. The Committee has also related the lack of access to contraceptive information and services to high rates of maternal mortality. **Cameroon**, 08/12/99, E/C.12/1/Add.40, para. 25; **Paraguay**, 28/05/96, E/C.12/1/Add.1, para. 16.

[16] **Armenia**, 08/12/99, E/C.12/1/Add.39, para. 15; **Poland**, 16/06/98, E/C.12/1/Add.26, para. 12.

[17] Examples include: **Argentina**, 08/12/99, E/C.12/1/Add.38, para. 24; **Dominican** Republic, 12/12/97, E/C.12/1/Add.16, para. 15, 22; **Gambia**, 31/05/94, E/C.12/1994/9, para. 16; **Mali**, 21/12/94, E/C.12/1994/17, para. 13; **Mongolia**, 01/09/2000, E/C.12/1/Add.47, para. 15; **Morocco**, 30/05/94, E/C.12/1994/5 , para. 5; **Morocco**. 01/12/2000, E/C.12/1/Add.55, para. 29; **Paraguay**, 28/05/96, E/C.12/1/Add.1, para. 16; **Solomon Islands**, 14/05/99, E/C.12/1/Add.33, para. 22.

[18] Examples include: **Morocco**, 01/12/2000, E/C.12/1/Add.55, para. 53; **Cameroon**, 08/12/99, E/C.12/1/Add.40, para. 25; **Argentina**, 08/12/99, E/C.12/1/Add.38, para. 38.

[19] **Mauritius**, 31/05/94, E/C.12/1994/8, para. 15; **Poland**, 16/06/98, E/C.12/1/Add.26, para. 12.

[20] **Armenia**, 08/12/99, E/C.12/1/Add.39, para. 19.

[21] **Guinea**, 28/05/96, E/C.12/1/Add.5, para. 22.

[22] **Guinea**, 28/05/96, E/C.12/1/Add.5, para. 22; **Nigeria**, 13/05/98, E/C.12/Add.23, paras. 20, 39.

[23] **Nigeria**, 13/05/98, E/C.12/Add.23, para. 39.

[24] Examples include: **Argentina**, 08/12/99, E/C.12/1/Add.38, paras. 25 and 39; **Bulgaria**, 08/12/99, E/C.12/1/Add.37, para. 31; **Cameroon**, 08/12/99, E/C.12/1/Add.40, paras. 16 and 34; **Democratic Republic of the Congo**, 12/05/2000, E/C.12/1/Add.45, para. 17; **Dominican Republic**, 12/12/97, E/C.12/1/Add.16, para. 22; **Egypt**, 12/05/2000, E/C.12/1/Add.44, paras. 20 and 35; **El Salvador**, 28/05/96, E/C.12/Add.4, para. 20; **Israel**, 04/12/98, E/C.12/1/Add.27, para. 31; **Italy**, 12/05/2000, E/C.12/1/Add.43, paras. 14 and 27; **Jordan**, 01/09/2000, E/C.12/1/Add.46, paras. 16 and 31-32; **Mauritius**, E/C.12/1995/18, para. 245; **Mexico**, 08/12/99, E/C.12/1/Add.41, para. 26; **Mongolia**, 01/09/2000, E/C.12/1/Add.47, para. 12; **Nigeria**, 13/05/98, E/C.12/Add.23, para. 21; **Poland**, 16/06/98, E/C.12/1/Add.26, paras. 13 and 21; **Portugal**, 01/12/2000, E/C.12/1/Add.53, para. 12; **Sri Lanka**, 16/06/98, E/C.12/1/Add.24, para. 14; and **United Kingdom of Great Britain and Northern Ireland - Hong Kong**, 04/12/97, E/C.12/1/Add.19, para. 14.

[25] **Italy**, 12/05/2000, E/C.12/1/Add.43, para. 15; and **Nigeria**, 13/05/98, E/C.12/Add.23, para. 23.

[26] **Nigeria**, 13/05/98, E/C.12/Add.23, para. 23.